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1 THE STATE OF NEW HAMPSHIRE  
2 HILLSBOROUGH, SS SUPERIOR COURT  
3 NORTHERN DISTRICT  
4 \* \* \* \* \*  
5 JULIEN LONGDEN and SHEILA LONGDEN \*  
6 v. \* 00-C-442  
7 PHILIP MORRIS, INC., R.J. REYNOLDS TOBACCO\*  
8 COMPANY, BROWN & WILLIAMSON TOBACCO \*  
9 CORPORATION, LORILLARD TOBACCO COMPANY, \*  
10 INC., LIGGETT GROUP, INC., THE AMERICAN \*  
11 TOBACCO COMPANY, TBI CORPORATION, INC., \*  
12 MANCHESTER WHOLESALE DISTRIBUTORS, and \*  
13 NEW HAMPSHIRE TOBACCO CORPORATION \*  
14 \* \* \* \* \*

15 VOLUME III  
16 DEPOSITION OF ANDREW EDWIN SMITH, PH.D.  
17 Deposition taken at the law offices of  
18 Douglas, Monziona, Leonard & Garvey, PC,  
19 6 Loudon Road, Concord, New Hampshire, on  
20 Friday, March 28, 2003, commencing at  
21 1:05 p.m.  
22 Court Reporter:  
23 Jennifer A. Vaillancourt, CSR

0002

# I N D E X

WITNESS: Andrew E. Smith, Ph.D.

EXAMINATION: By Mr. Murray Page 6

## EXHIBITS FOR IDENTIFICATION:

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2 15 Surgeon General's Report, 1989 146  
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4 (Original exhibits retained by Mr. Lee.)  
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STIPULATIONS

2

It is agreed that the deposition shall be taken in the first instance in stenotype and when transcribed may be used for all purposes for which depositions are competent under New Hampshire practice.

6

Notice, filing, caption and all other formalities are waived. All objections except as to form are reserved and may be taken in court at time of trial.

10

It is further agreed that if the deposition is not signed within thirty (30) days after submission to counsel, the signature of the deponent is waived.

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1 (Smith Exhibits 7 through 10 were  
2 marked for identification.)  
3 MR. MURRAY: We've stipulated that Dr. Smith  
4 is still under oath, continuing from his last  
5 deposition.

6 FURTHER EXAMINATION

7 BY MR. MURRAY:

8 Q. Okay. What I have done, Dr. Smith, is I have  
9 premarked four exhibits.

10 Exhibit 7 --

11 We're continuing with the numbers that we  
12 left off with.

13 No. 7 is the correction and signature page to  
14 deposition dated November 13, 2002.

15 A. Okay.

16 Q. I'll give these to you.

17 No. 8 is a correction and signature page to

18 deposition dated October 8. I'm sorry, the -- that's  
19 the date of the deposition. It has a fax line on top  
20 of October 31, 2002.

21 Exhibit 9 is a fax sent to me from Mr.  
22 Douglas that contains several charts and some  
23 polling-type information.

0007

1 A. Um-hum.

2 Q. And Exhibit 10 is another set of charts that  
3 Mr. Douglas faxed to me.

4 And both Exhibits 9 and 10 were faxed on  
5 March 27, 2003.

6 What I've also done, just to speed things  
7 along, because I have -- I'm going to ask about some of  
8 the changes marked on your errata sheet, is we have  
9 your deposition transcript from October 8, and we've  
10 put Post-Its, and we've marked a section of testimony  
11 that --

12 A. I'll just put this, which is the same thing  
13 without the tags, over here.

14 Q. Okay. Sure.

15 A. Give us --

16 Q. I'm not going to make the transcript an  
17 exhibit, because there's --

18 MR. DOUGLAS: No, there's no need.

19 Q. BY MR. MURRAY: -- no need to do that.  
20 Now, how much time have you spent on this  
21 case since your deposition on October 8, 2002?  
22 A. Would that include all of the billable time,  
23 or time sitting thinking about it, or time -- because I  
0008 think last time that we talked about this there was  
1 some confusion in my mind, I think, between hours that  
2 I'm billing and hours that I'm kind of working on it.  
3 I don't know if that --  
4 Q. Okay. Well, let me ask you both questions,  
5 then.  
6 A. Okay.  
7 Q. How much time have you just spent in total  
8 working on the case since October 8, 2000 -- since  
9 October 8, 2002?  
10 A. It's going to have to be an estimate, because  
11 I haven't tallied this up.  
12 Q. Okay.  
13 A. Could I just jot a couple things down? I'm  
14 going to jot them down because I want to be somewhat  
15 complete.  
16 Q. Sure.  
17 A. In the twenty- to thirty-hour range, let's  
18 say, total.  
19



20 Q. So you've spent twenty to thirty hours --  
21 A. In addition --  
22 Q. -- working on this case since October 8,  
23 2002?  
0009  
1 A. Yes.  
2 Q. And you just jotted down a number of  
3 different categories.  
4 A. Yes.  
5 Q. How did you group them?  
6 A. Reading, rereading the deposition; amending  
7 the deposition; doing additional searches for  
8 information about addiction; --  
9 Q. Just so that we can get through this more  
10 quickly, if you can read the categories and then the  
11 amount of time --  
12 A. Sure. Sure.  
13 Reading and rereading the deposition, I put  
14 five hours; amending the deposition, approximately two  
15 hours; searching for information about addiction and  
16 producing some of the materials that you've got here,  
17 five to ten hours, in there; supplemental searches for  
18 other information and looking at other materials that  
19 have come to my attention since the last time, maybe  
20 five hours there; --

21 Q. Um-hum.  
22 A. -- conversations with Mr. Douglas, maybe an  
23 hour to two hours there; and then we -- yesterday, we  
0010  
1 spent some time going over the materials that I was  
2 going to talk about today, so about -- I include  
3 driving, about four hours yesterday.  
4 So what's that come to? In the twenty- to  
5 thirty-hour range. And, again, these are  
6 approximations.  
7 Q. I understand.  
8 Now, have you billed Mr. Douglas yet for your  
9 time?  
10 A. Not since, no.  
11 Q. And are you planning on billing him fewer  
12 than twenty to thirty --  
13 A. Uhm, no. Maybe I'll bill him more.  
14 MR. DOUGLAS: I'll take that total.  
15 A. It would approximately be about that. And I  
16 would say what I'll do is I have that material that I  
17 can go back and get the time spent on it. I just don't  
18 have it here in front of me.  
19 Q. BY MR. MURRAY: Okay. You mentioned that you  
20 had been confused about questions regarding time that  
21 you had put into the case when you were asked at your

22 last deposition. Can you explain to me what you mean  
23 by --  
0011  
1 A. Yes.  
2 I've spent lot of time doing, say, rather  
3 fruitless Internet searches.  
4 The databases that are available for public  
5 opinion data are like other -- I guess it's not  
6 uncommon in databases. You can't just say, give me  
7 everything about this, and it spits it out. So you  
8 have to kind of, you know, choose the words that you're  
9 searching for carefully, choose the time frames  
10 carefully, keep going back and forth over these things.  
11 I've spent quit a bit of time going through  
12 databases in kind of fruitless searches and realized  
13 that what I was doing was just being a knucklehead from  
14 my use of the search engines, and I didn't think it  
15 would be a fair thing to do to bill for getting my  
16 technical competence up in a database search, which is  
17 not what I'm testifying about.  
18 My expertise is as a public opinion  
19 researcher, as somebody who understands public opinion;  
20 never claimed to be a computer expert.  
21 So I spent a lot of time and -- going down  
22 dead ends using the technology on the database engines.

23 Q. Okay. And how much time did you spend going  
0012  
1 down that end, roughly?  
2 A. I'd have to refer to my previous testimony  
3 about time, because I think when -- and I don't want to  
4 be inaccurate with what I said then and what I said  
5 now, because I think the number of hours I said last  
6 time --  
7 MR. DOUGLAS: I thought it was eighty.  
8 A. Yeah, it was about eighty hours.  
9 And I'd say that, God, with the various  
10 databases that I looked at, and, again, these are  
11 estimates, because you can't -- and I don't want to  
12 seem -- I just want to make sure that my thinking about  
13 this is clear.  
14 When you're sitting down in front of a  
15 computer for eight hours or so doing database searches,  
16 out of that eight hours you might have two -- an hour  
17 or two hours of fruitful searches where you're finding  
18 the information that you need, and you might have  
19 another four or five hours that are fruitless searches,  
20 but they're all interspersed. So it's difficult to  
21 parse out how much time is specifically spent useful  
22 versus nonuseful.  
23 Does that help?

0013

1 Q. BY MR. MURRAY: Well, did you -- when you  
2 estimate -- I think I might have been wrong. I thought  
3 you stated between forty and eighty --

4 A. Yeah.

5 Q. -- hours last time?

6 A. Yes.

7 Q. Now, did you include in that estimate time  
8 that you had conducted productive database searches on  
9 the Internet?

10 A. Yes.

11 Q. And you just discounted or didn't include  
12 time that you had spent --

13 A. No, I think the eighty hours -- if you look  
14 at the high end of that, the eighty hours would include  
15 the fruitless searches, and the forty hours is probably  
16 going to be about where I'm billing him, the total  
17 amount billed.

18 So it's -- the fruitless searches are in that  
19 original estimate, is what I'm trying to say.

20 Q. I understand.

21 So your original testimony was accurate, --

22 A. Yes.

23 Q. -- then?

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1           A.    I'm -- just want to make sure that you  
2 understand there are a lot of hours that were spent  
3 kind of working on the case, but I'm not going to bill  
4 all of those hours because I'm working -- probably  
5 wouldn't be doing that, those searches, if I had --  
6 hadn't been on the case, but, at the same time, I don't  
7 think it's fair to bill somebody for my getting up to  
8 speed.

9           Q.    That's fine. And all I wanted to make sure  
10 was that the forty to eighty hours estimate includes  
11 all the work that you did on this case?

12          A.    Yes.

13          Q.    Okay. Now, you said that you had some  
14 conversations with Mr. Douglas?

15          A.    Um-hum.

16          Q.    And you estimated one to two hours?

17          A.    Yes.

18          Q.    Now, how many different conversations did you  
19 have with Mr. Douglas?

20          A.    Again, it would have to be an estimate. I  
21 would say, at most, a half a dozen. Six.

22                And those concerned questions about him  
23 telling me that he was going to be sending over copies

0015           1 of the deposition. If I got copies of the deposition.

2 I've never been in this position before, so what to do  
3 with the deposition, and the process of rereading it  
4 and making some changes, amendments, to the deposition.  
5 So talking through with him, you know, what's this  
6 process about? What does it mean? More of the -- kind  
7 of the logistical things.

8 And then there was some brief conversations  
9 where he would call and say that -- for instance, he  
10 found another piece of information, public opinion  
11 data, that came out from a case. Called me up and  
12 said, there's some new information that you should be  
13 aware of. I'm going to fax it over to you.

14 Q. Okay.

15 A. You know, so it's -- more conversation about  
16 the logistics of how to go through my life as a witness  
17 in this case.

18 Q. Okay. Were there any written communications  
19 between you and Mr. Douglas --

20 A. Written?

21 Q. -- since your deposition?

22 A. Yes. They would have been some -- for  
23 instance, some material that was faxed over. And the

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1 cover sheet is here.

2 Q. Okay. Now, what material did Mr. Douglas fax

3 to you?  
4 A. And I may not have -- I'm not going to say  
5 that I have all of it here. This is an example of the  
6 kind of material that was faxed over. Or written to  
7 me.  
8 Q. Okay. And this is a letter dated February  
9 18, 2003, --  
10 A. Yes.  
11 Q. -- with an attachment?  
12 A. Yes.  
13 MR. MURRAY: Can I --  
14 MR. DOUGLAS: I think that's it. I don't  
15 think I sent you anything else, Andy.  
16 MR. MURRAY: Well, can I get -- I want a copy  
17 of this to mark as an exhibit.  
18 MR. DOUGLAS: Yeah. Why don't you take this  
19 one, and we'll have her mark it.  
20 (Discussion off the record.)  
21 (Smith Exhibit 11 was  
22 marked for identification.)  
23 Q. BY MR. MURRAY: So as far as the -- you know,  
0017  
1 the only written communication that you received from  
2 Mr. Douglas was the one dated February 18, 2003?  
3 A. And possibly the -- the cover letters on the



4 depositions that were sent to me. But --  
5 Q. Nothing substantive, though?  
6 A. No.  
7 Q. Did you send Mr. Douglas any written  
8 materials since your last deposition?  
9 A. No. No.  
10 Q. And the -- when I say Mr. Douglas, I'm  
11 including any other lawyers.  
12 A. Yes. Yes.  
13 Q. Okay. Now, do you recall any substantive  
14 communications with Mr. Douglas? And I'm not talking  
15 about, you know, what it means to be a witness in the  
16 case, I'm talking about, you know, where he conveyed to  
17 you orally information that you have considered in --  
18 with respect to your opinions in this case.  
19 A. With respect to my opinions, -- well, could  
20 you -- I'm -- I'm --  
21 Q. Yeah.  
22 A. Be a little more precise what you're looking  
23 for.  
0018  
1 Q. Were there any substantive discussions that  
2 you had with Mr. Douglas about this case? And I'm not  
3 interested in just procedural, you know, return the  
4 deposition, reread the deposition, that kind of thing.

5           A. Well, I think the conversations -- the couple  
6 brief conversations we had over the phone about the  
7 information that you now have marked as Exhibit 11 were  
8 that, you know, this is some material that you should  
9 look at. It was just released in a case that happened,  
10 and I think it's important for you.

11           And then yesterday we discussed what my way  
12 of thinking is and, you know, where I am now in the  
13 case. But not --

14           Q. So other than the information that he  
15 conveyed to you through his February 18, 2003 letter,  
16 Mr. Douglas didn't provide any information to you, even  
17 orally, --

18           A. Well, there are some other -- some other  
19 information that was -- that we had talked about that  
20 was sent that Mr. Douglas had provided to me over time,  
21 and, actually, this was why I had -- it was --  
22 actually, I --

23           Q. If you can just read from --

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1           A. Yeah. One is an article called Cigarette  
2 Smoking. It's in the Journal of the National Cancer  
3 Institute. And it concerns a -- it's some backup  
4 information here about the nature of cigarette smoking,  
5 who smokes, and some of the information here. So this

6 is Andrew Bergin and Neil Caporaso.  
7 One is a copy of A Frank Statement to  
8 Cigarette Smokers.  
9 This is from the Manchester Union Leader. In  
10 1954.

11 The affidavit of Michael Chesson. And we  
12 talked about this briefly. He showed me this. It's --  
13 only has really -- these are public opinion pieces in  
14 the affidavit, really, where he's talking about the  
15 polling data that Dr. Chesson had. And, you know,  
16 again it was to make me aware, do I have all of this  
17 information. This is all information that we had  
18 talked about in -- I think in the previous deposition.

19 And the other piece of that, related to that,  
20 was just this -- this is the -- one of the exhibits in  
21 his deposition. Which has just a sheet about the  
22 Senior Scholastic Survey.

23 So it was just some of the survey data to

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1 basically make sure that there wasn't something --  
2 information that he had come across that I had  
3 overlooked.

4 Q. Okay. And at a break, or after the  
5 deposition, I'd like to get all of those copies, and  
6 maybe we can make it a single exhibit number.

7 A. Sure.  
8 Q. Is there any --  
9 MR. DOUGLAS: Yeah, I think you might as well  
10 keep them -- if -- we can put the Chesson stuff  
11 together, but I wouldn't make them all one exhibit.  
12 MR. MURRAY: Okay. We'll divide them up,  
13 then.  
14 THE WITNESS: Yes, this is in here. Just  
15 pulled out.  
16 Q. BY MR. MURRAY: All right. Did Mr. Douglas  
17 provide you with any information orally that's relevant  
18 to your opinions since your October 8 deposition?  
19 A. Oral -- maybe oral discussions or telling me  
20 what is the information that he's got for me here, but  
21 not -- I wouldn't, you know, say providing me any  
22 additional information that I wasn't aware of.  
23 Q. Okay. Do you recall what he said about the  
0021 written materials that he provided?  
2 A. Basically, here is the -- for instance, in  
3 this deposition, I think this is the one that is  
4 probably most important, --  
5 MR. DOUGLAS: It's actually an affidavit.  
6 THE WITNESS: Affidavit. Excuse me.  
7 A. Sorry. This affidavit from Michael Chesson.

8 He --  
9 Ask me your question again. I just lost the  
10 train of thought.  
11 Q. BY MR. MURRAY: I'm asking you what Mr.  
12 Douglas said to you about the written materials that he  
13 provided to you.  
14 A. Yeah. That here are some written materials,  
15 here's some information, that you may or may not have  
16 seen. This is, you know, what's in here. And  
17 basically pointing out that there are some public  
18 opinion polls referenced in this. And my comments. Do  
19 I have it? I -- I'll look it over. Yeah, I've got the  
20 1954 Gallup stuff, I've got the 1960 Senior Scholastic  
21 stuff.  
22 MR. DOUGLAS: Slow down.  
23 THE WITNESS: I'm sorry.  
0022  
1 MR. DOUGLAS: Just slow down.  
2 A. That I had this material already and had  
3 already incorporated it into my analyses.  
4 Q. BY MR. MURRAY: Okay. You don't recall Mr.  
5 Douglas saying anything about -- else about the written  
6 materials?  
7 A. No, I think he was just concerned -- wanting  
8 to know that I had it.

9 Q. Okay. Now, all of these different materials  
10 here from the exhibit that's going to be -- marked 11,  
11 which is the February 18, 2003 letter from Mr. Douglas  
12 with an attachment, and the other written materials  
13 that you described to me, what impact, if any, did  
14 those materials have on your opinions in this case?  
15 A. If any -- they haven't changed my opinions.  
16 They -- if anything, they -- the data and additional  
17 information that I have included in some exhibits that  
18 I'll show you later have just kind of strengthened my  
19 conclusions. It's other polling data, public opinion  
20 data, that I had not found before, which are  
21 essentially saying the same thing as the other  
22 information that I had already reported on. So it's  
23 the same sort of data from other people that doesn't  
0023  
1 change my conclusions at all.  
2 Q. Okay.  
3 A. It reinforces my conclusions.  
4 Q. Okay. Did you ask to see the rest of the  
5 Chesson affidavit?  
6 A. No.  
7 Q. I think there's only -- let me see. There's  
8 only Pages 1, 32, and then 40, and 41. And then there  
9 are several attachments that you have. But did you ask

10 to look at the rest of the Chesson affidavit?  
11 A. No. In fact, Mr. Douglas and the --  
12 THE WITNESS: And your -- Jason. What's  
13 Jason's last name?  
14 MR. DOUGLAS: Major.  
15 A. -- Jason Major, they had a side conversation,  
16 should or does Andy need to see this other information,  
17 and their response was, no, just the public opinion  
18 data.  
19 Q. BY MR. MURRAY: Do you have any interest in  
20 looking at the rest of Dr. Chesson's affidavit?  
21 A. Well, considering that Mr. Douglas said it's  
22 about this big, holding my hands out about two feet  
23 apart, not really. I don't have the time or the  
0024  
1 ability to go through any of that.  
2 Q. Well, the affidavit itself isn't two feet  
3 long. The affidavit itself is in the neighborhood of  
4 fifty or so pages.  
5 A. No, I would -- I would take Mr. Douglas' word  
6 that the information that he was showing me about  
7 public opinion data, which is what my concern is, I  
8 think, in this case, is the -- is all the informs that  
9 was in that deposition (sic) related to public opinion.  
10 Q. And you don't have any desire at all, you're

11 not even curious, to see what Dr. Chesson has to say?

12 A. Oh, I would be curious on a layman's level,  
13 but, yeah.

14 Q. But you don't think it's possible that  
15 anything Dr. Chesson said could at all be relevant to  
16 your opinions; that fair to say?

17 A. No, I don't think it's fair to say that,  
18 because I don't know what's in it.

19 Q. Well, I guess that's what I'm trying to find  
20 out. Here is an affidavit from a historian with a  
21 Ph.D. who's talking about common awareness of the  
22 dangers of smoking and addiction, and I'm trying to  
23 understand why you wouldn't have a desire at least to

0025

1 know what he has to say.

2 A. Well, I would say I do have a desire. I  
3 would have a desire to know what he says. Know what  
4 his conclusions were. To a certain extent, it's  
5 probably not that important. Mr. Douglas indicated  
6 that some of the materials that are in there were  
7 similar to some materials that he had shared with me  
8 from previous cases of historical analyses about  
9 smoking that were done by other attorneys, and this  
10 would be a similar sort of thing.

11 I -- again, when I'm -- what I see my role is



12 here is to testify about the nature of public opinion  
13 in the era that Julien Longden started smoking and the  
14 time that he was smoking. And I'm a survey researcher.  
15 And I do public opinion research really to -- using  
16 survey research as the methodological tool. I have  
17 expertise in history, but I'm not a tenured historian  
18 or a tenured person within the history department. So  
19 my concern or the things that I'm basing my conclusions  
20 on are the survey research data, which I think is the  
21 most accurate way of judging or assessing what public  
22 opinion was at the time.

23 Q. You may believe that it's the most accurate,  
0026

1 but are you discounting the possibility that other  
2 historical information that a Ph.D. in history would  
3 rely on in reaching conclusions about the same topic  
4 that you're testifying about would have any relevance  
5 to your opinions?

6 A. Well, my professional opinion that I've made  
7 and would make at trial is going to be based on the  
8 available survey data, because I think it's the most  
9 accurate way of assessing public opinion. And, you  
10 know, other -- there's other anecdotal information that  
11 would be kind of interesting, -nice-to-know information,  
12 but I don't see as that would change my -- I don't see

13 how that would change my opinion about assessment of  
14 what public opinion was.  
15 Q. Well, let me ask you this. How do you know  
16 unless you look at it how relevant or important  
17 historical information may be that's in that affidavit?  
18 A. Probably don't. I mean, you can't -- you're  
19 asking me to disprove a negative.  
20 Q. Right.  
21 A. I think it's logically impossible. I mean,  
22 there's always a possibility there may be something in  
23 there that would be of real interest. But --  
0027  
1 Q. But didn't that possibility make you at least  
2 curious to want to look at what the -- this other  
3 person had to say?  
4 A. Sure. Curious. But it's not -- my own  
5 individual -- I don't know where you're going. I don't  
6 know why my individual curiosity about something is --  
7 Q. Well, I mean, I'm not just talking about  
8 curiosity as layman, I'm talking about curiosity as  
9 someone who is offering an expert opinion in this case.  
10 Didn't you at least think to ask Mr. Douglas  
11 to look at what a Ph.D. historian who spent a lot of  
12 time looking at the same issue --  
13 MR. DOUGLAS: How long -- Mike, we're

14 getting --  
15 MR. MURRAY: I'm going to -- I'm not going to  
16 ask him many more questions. I'm just trying to  
17 understand his answers.  
18 A. Yeah, and I think to a certain extent some of  
19 the information is here in the affidavit, in the  
20 exhibits attached. There's articles from newspapers,  
21 you know, Xerox copies of some newspaper articles.  
22 Something from films. A magazine about films. You  
23 know, there's some information here that I can see.  
0028  
1 And I guess looking at this and saying, is this going  
2 to be typical of the information in there, this is  
3 similar to the information that I had seen before, and  
4 it's similar to other information I'm aware of that's  
5 been presented in tobacco cases. I don't know how much  
6 more information you can get into a historical  
7 analysis.  
8 Q. BY MR. MURRAY: You could find out by reading  
9 a fifty-page affidavit; isn't that fair to say?  
10 A. Possibly, yeah, but --  
11 Q. And you never asked Mr. Douglas to read the  
12 rest of the affidavit?  
13 A. No. No. And I -- when there was -- in fact,  
14 I didn't even ask to see the affidavit in the first

15 part. Mr. Douglas brought the affidavit to my  
16 attention to have me look at the public opinion things  
17 to make -- the public opinion pieces to make sure that  
18 I had those covered.  
19 Q. When you say public opinion pieces, I assume  
20 you're referring to the polling data, because --  
21 A. Yes.  
22 Q. -- there's plenty of public opinion pieces  
23 that are in the affidavit?  
0029  
1 A. Well, yeah, and --  
2 MR. DOUGLAS: I'll object to plenty. I think  
3 there were four. But --  
4 A. And I would say in my professional field,  
5 public opinion data is really referring to polling  
6 data. They're almost interchangeable. So I wouldn't  
7 quite agree with you on that.  
8 Q. BY MR. MURRAY: Okay. Now, in this February  
9 18, 2003 fax and the attachment, --  
10 A. Um-hum.  
11 Q. -- what do you know about the attachment?  
12 A. This is a -- from a Gallup Poll or Gallup  
13 Study that was done for one of the tobacco companies.  
14 And I'm not sure which it was done for. But it was a  
15 study that looked at the awareness of people about the

16 Surgeon General's warning on cigarette packs or  
17 cigarette -- packages of cigarettes.  
18 Q. Let me ask a question.  
19 How do you know that?  
20 A. Well, there was -- it says, Surgeon General's  
21 Warning, January 1972 through December '72, in A  
22 Special Presentation --  
23 (Interruption by the reporter.)  
0030  
1 MR. DOUGLAS: Slow down. Slow down.  
2 A. I'm sorry.  
3 The title of this is A Special Presentation  
4 for Philip Morris, Incorporated. The subtitle is A  
5 Review of Awareness of the Surgeon General's Warning By  
6 Brand, January 1972 through December 1972. And then  
7 the title of the chart on the next page is Surgeon  
8 General's Warning, January 1972 through December 1972.  
9 And the important information on the top of the column  
10 headings is percent aware of the warning.  
11 Q. BY MR. MURRAY: Now, do you know whether  
12 warning a- -- warnings appeared on advertisements or  
13 not?  
14 A. Do I know if warnings appeared on  
15 advertisements at that time period?  
16 Q. Yes.

17 A. I can't say for sure if they did at that time  
18 period.

19 Q. Do you think it's at least theoretically  
20 possible -- well, let me ask you this. Do you know  
21 that the survey was asking respondents to identify  
22 their awareness of warning labels on cigarette packages  
23 as opposed to cigarette advertisements?

0031

1 A. It says, A Review of the Awareness of the  
2 Surgeon General's Warning By Brand. So -- and brand,  
3 here again, is the type of cigarettes that the person  
4 smoked.

5 Q. Do you know whether cigarettes were  
6 advertised by brand?

7 A. Sure. Cigarettes were advertised by brand.

8 Q. So I guess my question is, do you know  
9 whether the survey sought to elicit people's awareness  
10 of the Surgeon General's warnings on cigarette packages  
11 as opposed to cigarette advertisements in the  
12 newspapers or in the magazines?

13 A. I don't know that, but I can't see how that  
14 would really make that much difference in the results.

15 Q. Well, let me ask you this. Do you know how  
16 the survey was performed?

17 A. If it were a Gallup Poll, my assumption is

18 that at this time it would have been conducted by  
19 face-to-face interview, possibly by telephone, because  
20 that --

21 Q. Let me just stop you there. I'm not asking  
22 you to assume anything. I'm just asking do you know,  
23 do you have any information, as to how this study was  
0032

1 performed?

2 A. My information would be based on other Gallup  
3 Polls conducted before that time and after that time  
4 and the methodology that Gallup would have used.

5 Q. Okay. But I'm asking you -- I'm not asking  
6 you to draw inferences from other Gallup studies, I'm  
7 asking just do you have any information --

8 A. No.

9 Q. -- with respect to this particular study?

10 A. No.

11 Q. Do you know what the demographics were of  
12 this particular study?

13 A. The only demographics that are indicated here  
14 are smokers and nonsmokers.

15 Q. So other than drawing inference from how  
16 other Gallup Polls were run, you have no idea what the  
17 respondents were asked to do in this study; isn't that  
18 correct?

19 A. That's true. That's fair.  
20 Q. Now, how --  
21 MR. DOUGLAS: We'll ask you to produce the  
22 complete poll, just for the record.  
23 MR. MURRAY: I don't know what you're --  
0033  
1 MR. DOUGLAS: It was done for your client,  
2 and it came out in the court case on the west coast, so  
3 I'll follow up with a letter.  
4 MR. MURRAY: Okay. This is Dr. Smith's  
5 deposition.  
6 Q. BY MR. MURRAY: Now, are you relying in any  
7 way on this poll in offering your opinions in this  
8 case?  
9 A. It's a -- again, a piece of supplemental  
10 information that doesn't change my conclusions at all.  
11 It's, I think, a reasonable interpretation, given the  
12 caveats about looking at future --  
13 If I could get a hold of the actual  
14 methodology and the actual questions that were used,  
15 but I'm going to make an assumption that it was done by  
16 Gallup, Gallup has a good reputation, and they're --  
17 and the methods they used are generally sound, if they  
18 used the typical sound methods that they used, that  
19 this is -- solidifies some of the opinions --



20 Q. Okay. Now, what would the typical sound  
21 methods be for this particular study?

22 A. A sound methodology would be -- for this  
23 would be a probability sample or a random sample.

0034

1 Q. Of how many people?

2 A. The number of people isn't especially  
3 critical. Four hundred people to -- four hundred  
4 people or more.

5 Q. Okay.

6 A. And even if it were less than four hundred  
7 people, even if -- with these sorts of low percentages,  
8 even if it were less, down to two hundred people, your  
9 margins of sampling error are going to be fairly small  
10 based on these estimates. So the sample sizes --

11 I don't want to -- to get into a digression,  
12 here, but I think it's important to mention that we  
13 have a tendency to focus on sample size as an  
14 indication of accuracy of the -- a survey, and it's not  
15 a critical -- it's not the critical aspect of the  
16 accuracy of the survey.

17 Q. Okay. If you can continue with what are the  
18 methodology you think should have been followed in this  
19 study.

20 A. That the questions that were used were not

21 obviously biased or loaded questions. That the  
22 interviewers that were used to collect the data were  
23 appropriately trained. That the data were entered into  
0035  
1 their computer systems in an appropriate fashion and  
2 that they were analyzed in an appropriate fashion.  
3 I have no reason to believe that Gallup would  
4 not -- do those things inappropriately. At that time,  
5 they were certainly experts, considered some of the  
6 best in the field. They still are today.  
7 Q. Do you know what the questions -- what  
8 questions were asked?  
9 A. No, I do not.  
10 Q. Do you know in what context the questions  
11 were asked?  
12 A. No, I do not.  
13 Q. Are you -- strike that.  
14 All right.  
15 A. And it would be very helpful if I did. So if  
16 you could provide that information to me, that would  
17 be --  
18 Q. Fortunately, Dr. Smith, --  
19 A. -- great.  
20 Q. -- it's not my deposition, and you're the one  
21 who's purporting to rely on it, not me.

22 MR. DOUGLAS: I'll follow up for you, Andy.  
23 Don't worry. Don't hold your breath.

0036

1 Q. BY MR. MURRAY: Now, how much time did you  
2 spend in this case between your October 8 deposition  
3 and the first errata sheet, which is Exhibit 8, and  
4 that's dated October 31, 2002?

5 A. How much time did I spend?

6 Q. Yeah.

7 A. I think I indicated from my -- the last  
8 questions that you asked approximately five hours or so  
9 reading the deposition, and then a couple more hours  
10 making amendments to the deposition.

11 Q. So you spent about seven hours working on  
12 this case between October 8, 2002, and October 31,  
13 2002; is that right?

14 A. Approximately, yes.

15 Q. Okay.

16 A. And -- well, -- yes, I'd say approximately  
17 that, yeah.

18 Q. And about five of those hours were spent  
19 reading the deposition?

20 A. Reading through the deposition, yes.

21 Q. So is it fair to say that about two of the  
22 hours were spent in looking for and reviewing

23 additional information that you used to supplement or  
0037  
1 to create this errata sheet?  
2 A. No, actually, it was the same time. You read  
3 through, and you, you know, write down, jot down,  
4 things that don't sound right to you, and you make  
5 corrections. And I, you know, just -- or writing down  
6 things or ways of making it mean what I meant it to  
7 say, to make my language more clear.  
8 Q. Yeah. I'm going to go through each one of  
9 those, but you didn't just change things, you also  
10 attached polls that you didn't tell us about at your  
11 October 8 deposition, at least for some answers; isn't  
12 that true?  
13 A. Yeah. And I think I may have even referred  
14 to those polls in the deposition, but I just put in --  
15 them in there to make it clear.  
16 The Bluegrass polling --  
17 Q. Okay. And I will go through each one, so I  
18 guess that may be the easiest way, but I'm trying to --  
19 to just get a basic sense, before I ask you the  
20 specific questions.  
21 A. Um-hum.  
22 Q. Did you do any further research between  
23 October 8, 2002, and October 31, 2002?

0038

1 A. No. No. The information that I had that was  
2 supplemented today, this was information that I had  
3 already had at the time of my deposition.

4 I get what your point is now.

5 Q. And did you do any further work on this  
6 case -- how much further work, if any, did you do on  
7 this case between October 31, 2002, and November 12,  
8 2002?

9 A. Just the reading and editing of the  
10 deposition. No additional research.

11 Q. Okay.

12 A. Reading and amending of the deposition, I  
13 should say.

14 Q. Now, how much additional research have you  
15 done in this case since your November 12, 2002 --

16 MR. DOUGLAS: It's been asked and answered.

17 MR. MURRAY: Correct.

18 MR. DOUGLAS: And I really think we're  
19 starting to get cumulative. He's already been through  
20 the time breakdown.

21 MR. MURRAY: No, but -- no, -- Chuck, my  
22 recollection is that he was asked what he did since his  
23 October 8 deposition. Then I asked him what did he do

0039

1 from October 8 to 31st. And then what did he do from  
2 October 31 to November 12. And now I'm asking what he  
3 did from November 12 to the present in terms of  
4 research.  
5 A. If you go back to the results from my  
6 previous questions, my previous answer, it's in the ten  
7 to twenty hours of time. I don't remember precisely.  
8 You know, we're talking about estimates, here. But  
9 it's five to ten hours that I looked at -- for  
10 information specifically about addiction, and then, you  
11 know, five to ten hours where I looked at information  
12 about -- looked at other -- supplemental searches to  
13 find some information that fleshes things out.  
14 Q. BY MR. MURRAY: Okay. Have you found any  
15 additional information about addiction since your  
16 October 31 --  
17 A. Yes.  
18 Q. -- corrections?  
19 A. Yes.  
20 Q. And could you tell me what that information  
21 is?  
22 A. Yes. It's the information that was in --  
23 Q. Okay. I'll ask you later. It's on one of  
0040  
1 the faxes --

2 A. Yes.  
3 Q. -- that Mr. Douglas sent me?  
4 A. Yes.  
5 Q. So it's either Exhibit 9 or 10?  
6 A. Yeah.  
7 Q. Okay. All right.  
8 Now we can dig in to your changes, here. And  
9 we'll start with Exhibit 8.  
10 I'm sorry. Strike that.  
11 Start with Exhibit 7. I'm sorry about that.  
12 MR. DOUGLAS: That's the short one. It's  
13 that one.  
14 THE WITNESS: Okay.  
15 MR. DOUGLAS: All right. We're on 7 now.  
16 MR. MURRAY: Yeah, we're on 7 now.  
17 Q. BY MR. MURRAY: Okay. The first one I'm  
18 going to ask you about is actually your second  
19 correction. It's the one on Page 140. And you can  
20 use, if you'd like, those transcripts I handed to you.  
21 Okay. Now, why did you change the second  
22 paragraph of your response to the question, what is  
23 your background in American History from, so I'm not an  
0041  
1 expert, but, you know, it's a routine part of the work  
2 that I do to, so I'm not an expert in the history

3 department, but, you know, it's a routine part of the  
4 work that I do?

5 A. And I think that refers -- if I can -- if I  
6 may go back to the change on Page 138, because I think  
7 it -- it's the same thing.

8 On Page 138 on Line 14 the question was, you  
9 don't consider yourself to be an expert in psychology;  
10 do you. No. No. There it's, but I have expertise in  
11 the field. I'm not an expert in the academic sense  
12 that I'm a member of the department and -- in academia,  
13 people get very territoriable -- territorial about  
14 claims of specific expertise.

15 So I'm not a Ph.D. in psychology. When you  
16 look down to -- but I do have considerable expertise  
17 because the nature of what I do is looking at cognitive  
18 theor- -- cognitive psychological models about the way  
19 that people answer survey questions. I -- I've got to  
20 have a pretty decent understanding of psychology to do  
21 that. And in that sense, I do have expertise in  
22 psychology.

23 The same thing applies in history. The work

0042  
1 that I do is in public opinion research, in political  
2 research, I have to know a tremendous amount about  
3 American History, elections, the structure of American



4 Government, the way people were thinking at different  
5 times.  
6 So I'm not a Ph.D. in history, or not in the  
7 history department, but I have considerable expertise  
8 in history, and American History, particularly in the  
9 history of public opinion.  
10 So, I mean, in that sense it's clarifying the  
11 point that I have considerable expertise, probably much  
12 more than the average person would, but in the -- and I  
13 wanted to make sure that --  
14 When I was answering the question, I'm  
15 thinking of myself with my other colleagues at the  
16 university. And if I were to say, I'm an expert in  
17 history, and there's John Smith from the history  
18 department sitting next to me, he's going to say,  
19 you're not in the history department. But --  
20 So that's the clarification I wanted to make.  
21 Q. Just so I understand your clarification,  
22 you're not saying that the only difference between  
23 you -- the only difference in the expertise that you  
0043  
1 have and someone in the history department has is that  
2 they have a Ph.D. in history and you don't; are you?  
3 A. It's not the only difference. Certainly  
4 there's different types of training and graduate school

5 that you go through.  
6 One of the things about political science,  
7 though, is that it's often referred to as modern  
8 history. Or it's the history of a short time ago. So  
9 we use a lot of the similar methods, but not the  
10 complete methodologies that historians use. And  
11 there's a lot of variations in the methods historians  
12 use.  
13 Q. What is the historical method that historians  
14 use?  
15 A. In my understanding, --  
16 MR. DOUGLAS: I'm going to object to that.  
17 He was asked that in the deposition. I'm not going to  
18 have him answer it again.  
19 MR. MURRAY: Well, I'm going to ask it.  
20 And --  
21 MR. DOUGLAS: No.  
22 MR. MURRAY: -- you can instruct --  
23 MR. DOUGLAS: No.  
0044  
1 MR. MURRAY: The reason -- I'm not --  
2 MR. DOUGLAS: This is not a complete  
3 redeposition of the two prior depositions. We're only  
4 dealing with new stuff.  
5 MR. MURRAY: Are you finished?

6 MR. DOUGLAS: And I'll tell you when you  
7 asked about the historical method.  
8 MR. MURRAY: Chuck, just to short-circuit it,  
9 I know I asked him. I remember it being asked. All  
10 right. Or I didn't ask him, Mr. Griffin did. But he's  
11 changed his answer now, and now he's saying that he is  
12 not an expert in the history department but he has  
13 expertise in history. And I'm trying to understand  
14 that. And I'm asking it because of the change. I'm  
15 not going to spend an inordinate amount of time on it,  
16 but I think it's fair for me to ask.  
17 And he just said --  
18 MR. DOUGLAS: I don't agree.  
19 MR. MURRAY: -- he just said in part of his  
20 answer to asking about this, he said, you know, there  
21 may be different methodologies that historians would  
22 apply that he would apply. There might be  
23 similarities. And in follow-through to that, I'm  
0045 asking, do you know what the historical method is.  
1 A. And my response is, my understanding of the  
2 historical method is there isn't one historical method,  
3 there are many methods that historians use.  
4 Q. BY MR. MURRAY: Could you identify a few of  
5 them for me?  
6

7 A. One would be to go to a -- original data  
8 sources, original documents. One would be oral  
9 history, where they talk to people and people tell them  
10 stories. One would be to look at public opinion data,  
11 survey data, and try to discern what people were  
12 thinking at a particular time. A couple examples --

13 Q. But as far as you understand, there is no  
14 single recognized historical method that historians  
15 would -- Ph.D.s would recognize and would be able to  
16 talk about?

17 A. I can't say yes or no to that.

18 Q. Okay. Do you belong to any historical  
19 societies?

20 A. Yes.

21 Q. Which historical societies?

22 A. New Hampshire Historical Society.

23 Q. And what kind of work do you do in that?

0046

1 A. At -- the New Hampshire Historical Society  
2 is -- it's the -- describe it as this. It's a  
3 statewide museum, a society of people, interested in  
4 New Hampshire History. And the work that I've done  
5 with them in a professional sense, we did a survey of  
6 membership of that society. We did a survey asking  
7 members of the society their reasons for joining the

8 society, their reasons for attending, how often -- you  
9 know, how often they attended historical society  
10 events, what they like about it, what they don't like  
11 about it.

12 Q. Okay. Have you done anything else for the  
13 historical society?

14 A. I'm pausing here because I'm a member of a  
15 organization, a kind of a loose organization, called  
16 the New Hampshire Civic Connection. And one of the  
17 other organizations in the New Hampshire Civic  
18 Connection is the New Hampshire Historical Society.  
19 And we've collaborated on research on public -- on  
20 public policy issues. And --

21 Q. Okay. Let me just try to get -- have you  
22 done any work for any historical society in which you  
23 attempted to study a period in the past?

0047

1 A. No.

2 Thank you.

3 Q. Have you published any materials in which,  
4 other than the ones you have testified about at your  
5 first deposition, in which you have studied any period  
6 in the past?

7 A. No. Just my dissertation and the research  
8 related to my dissertation.

9 Q. Now, how did this change in your errata sheet  
10 to the question about your background in American  
11 History, how did that come about? Did you call Mr.  
12 Douglas and tell him that you wanted to change this, or  
13 did he suggest to you that you change it?

14 A. I think we had a conversation about what it  
15 means. And, in fact, I think that first even arose the  
16 same day as the -- I gave the deposition. That when we  
17 were -- I was saying, well, why were they asking about  
18 my expertise in these areas. And I didn't feel that my  
19 answer necessarily conveyed the -- how I view myself  
20 and my level of expertise in a particular area. By  
21 saying I'm not an expert, I think you could infer that  
22 I'm no different than the person on the street and  
23 their knowledge of American History. And I don't

0048

1 believe that's true at all. So by saying that I have  
2 considerable expertise in the area, I think that it  
3 makes it clearer what my awareness or understanding of  
4 American History is.

5 Q. Okay. Is it fair to say, then, that your  
6 testimony today is that you initiated the discussion  
7 with Mr. Douglas because you were concerned that your  
8 response didn't adequately convey the amount of  
9 expertise that you believe you have in history?

10           A.    Yeah, I'd say reasonably so.  You know, we  
11    had -- we were having a discussion about a number of  
12    topics.  
13           I've never done this sort of thing before,  
14    and after the first round of a deposition, I'm saying,  
15    okay, what did I just go through, here?  What did --  
16    you know, I'm thinking things that I may have answered  
17    not adequately, not appropriately.  So I'm discussing  
18    with him on a number of topics like this.  And asking  
19    me to go back and think now exactly who said this or  
20    that, -- I think it was just a matter of coming out --  
21    my expressing my concerns about things -- the way I  
22    answered questions and Mr. Douglas indicating, well,  
23    you know, maybe in this area it should have been -- you  
0049  
1    should think about it a little differently, or you  
2    maybe didn't explain yourself as clearly as you could  
3    have in this area.  
4           Q.    Is it fair to say that you don't recall who  
5    initiated the changes with respect to, you know, the  
6    history question and the psychology question but that  
7    you -- all you know is that it was -- all that you  
8    recall was that it was part of a general discussion you  
9    were having with Mr. Douglas?  
10          A.    I think that's probably fair to say.

11 Q. Let me ask you this. On the change to your  
12 response with respect to the question about  
13 psychology, --  
14 A. Um-hum.  
15 Q. -- do you recall that you had a concern that  
16 you didn't project sufficient expertise in the area of  
17 psychology after your deposition?  
18 A. Yeah. I think in -- in those areas  
19 specifically, yeah. Because as a public opinion  
20 researcher, we're dealing with -- the thing that we  
21 have to concern ourself with is -- one of the things we  
22 have to concern ourselves with is the way people answer  
23 questions. And the data on that or the theories on  
0050  
1 that are developed out of psychology. And my  
2 dissertation is concerning that sort of stuff.  
3 So if you ask me, am I -- I do have  
4 considerable expertise in cognitive psychology as it  
5 applies to survey research. I think that just makes it  
6 clearer.  
7 Q. Was there a concern that sort of came about  
8 after the deposition was over? The reason why I'm  
9 asking is the question relating to psychology was, you  
10 do not consider yourself to be an expert in psychology,  
11 do you, and your answer was, no, no. So you answered



12 no twice. It was unequivocal.  
13 A. Yes.  
14 Q. Now, when you gave that answer, do you recall  
15 that you were confused by the question?  
16 A. Well, I don't know that it's a matter of  
17 being confused by the question as it is to not  
18 understanding -- you know, not being clear in what my  
19 answer would be. Because when I went --  
20 As an aside, going back and rereading the  
21 deposition, the way you answer questions is an  
22 eye-opening experience when you realize that you  
23 haven't been as clear and precise as you would like to  
0051  
1 be.  
2 So in the context of going back and rereading  
3 and discussing the -- after that initial discussion  
4 with Mr. Douglas and rereading and saying, you know,  
5 this isn't conveying what I meant it to say, if  
6 somebody were to read this, going back and myself  
7 reading it, it makes it look like I don't have any  
8 expertise at all in psychology to the answer of that  
9 question, and, if that's the case, yes, I do have  
10 expertise in psychology.  
11 Q. Okay. Hold it.  
12 Did your concern with respect to your

13 response to the psychology question arise the day of  
14 the deposition, or did it arise after you had read your  
15 transcript?

16 A. Both. I was thinking about it driving home,  
17 too. You know, you think about it considerably over  
18 time between the time I even -- between the time I  
19 finished the deposition and the time I got a copy of  
20 the deposition. So, --

21 Q. Okay.

22 A. -- you know, I can't say --

23 Q. Well, --

0052

1 A. -- when it started or when it ended.

2 Q. Well, looking back on this, do you recall how  
3 you interpreted the question that you answered, no, no,  
4 how you interpreted that question at the time?

5 A. At that time I think I interpreted it as --  
6 you know, retrospectively, I interpreted it as, am I a  
7 psychologist.

8 Again, I'm coming -- I come at this from  
9 academia where academic departments are very  
10 territorial. If you don't have a Ph.D. in psychology,  
11 somebody in the psychology department is not going to  
12 consider you a psycholo- -- an expert in psychology.

13 Q. Okay. But just --

14           A.    So I -- and so you're asking me what I was  
15    thinking of when I hear questions like this.  Being an  
16    academic, I hear questions about, are you an expert,  
17    I'm thinking from years and years of training and  
18    experience and working in academia that you're asking  
19    me about my academic stature, my academic position.  
20    That's the way I think about these things.  
21           Q.    So are you saying now that you don't have an  
22    academic expertise in psychology?  
23           A.    No.  I think that's -- that's not what I'm  
0053  
1    saying.  I have expertise in psychology.  I am not a  
2    tenured member of the -- of a psychology department.  I  
3    don't have a Ph.D. in psychology.  
4           Q.    Okay.  Do you think the only difference  
5    between you and a Ph.D. in psychology, in terms of your  
6    knowledge of psychology and expertise in psychology, is  
7    that the Ph.D. has a Ph.D. in psychology and you don't?  
8           A.    I would hope not.  I would hope they have  
9    considerable more expertise than I have.  
10          Q.    That's what I was trying to understand.  
11          A.    Thank you.  
12          Q.    Do you belong to any professional societies  
13    in psychology?  
14          A.    No.

15 Q. Have you ever published any papers in the  
16 filed of psychology?

17 A. I'm pausing because public opinion research  
18 crosses over disciplines. There are psychologists who  
19 publish in public opinion research journals. And I  
20 have published in the Public Opinion Quarterly about  
21 cognitive models of psychology and how people answer  
22 survey questions. So, yes, I have, in that sense, --

23 Q. And The Public --

0054

1 A. -- published --

2 Q. I'm sorry.

3 And the Public Opinion Quarterly is a journal  
4 for people in the field of psychology; is that it?

5 A. You're missing my point.

6 The -- public opinion is a field that crosses  
7 many disciplines. There are people who are  
8 psychologists that are really students of public  
9 opinion. There are people who are political scientists  
10 who are students of public opinion and publish in  
11 public opinion journals. There are even historians  
12 that are students that study public opinion and publish  
13 in public opinion journals. So the field of public  
14 opinion is something that is a crossdisciplinary-type  
15 of field.

16 Q. Okay. I think I understand that what you're  
17 saying is there's a lot of overlap?  
18 A. Tremendous overlap, yes.  
19 Q. Have you published any papers in a journal  
20 that you believe is geared primarily towards --  
21 A. No.  
22 Q. -- psychologists?  
23 A. No.

0055

1 Q. All right. Now, moving on to your second  
2 errata sheet, --  
3 (Discussion off the record.)  
4 (Recess taken.)  
5 Q. BY MR. MURRAY: All right. Before I go  
6 forward with Exhibit 8, I just want to make sure I  
7 understand a point.  
8 I think you had mentioned that you looked at  
9 some materials from other -- some other tobacco  
10 litigation; is that right?  
11 A. Yes.  
12 Q. Now, is the only material that you looked at  
13 from other tobacco litigation what's in Exhibit 11?  
14 A. No, I think you have it in a binder from the  
15 previous --  
16 Q. Okay. All right. What I want to make

17 sure --  
18 MR. DOUGLAS: He's referring to a tab or an  
19 item in Exhibit 6.  
20 MR. MURRAY: I got you.  
21 MR. DOUGLAS: Which was, I believe, Michael  
22 Parish's affidavit. That's what his context for  
23 historians is.  
0056  
1 Q. BY MR. MURRAY: Okay. But was that part of  
2 the materials you gave to us at the last deposition?  
3 A. Yes. In Exhibit 6.  
4 Q. So the only material that you looked at in  
5 tobacco litigation since your last deposition is  
6 Exhibit 11; is that right?  
7 A. And the deposition. Or the affidavit --  
8 Q. Got you. All right. That's fine.  
9 A. So the materials that you have.  
10 Q. All right. Thanks.  
11 Now, on your errata sheet that was faxed on  
12 October 31, 2002, which is Exhibit 8, the first change  
13 that you made was made to Page 26. And the question  
14 is, why did you change your response to the question,  
15 so as you sit here today, you haven't formed an opinion  
16 about some of the matters in this matter from, no, I  
17 would say I have some -- I have formed an opinion, but

18 an opinion on this is subject to some change depending  
19 upon other information that I haven't seen to, no, I  
20 would have to say I have formed an opinion, but an  
21 opinion on this is subject to supplementation depending  
22 upon other information that I haven't yet seen?

23 A. I think that better reflects what I meant to  
0057

1 say.

2 Q. So was your original response truthful when  
3 you gave it?

4 A. Certainly. It was truthful. But I think  
5 that my --

6 Q. And so you understand, when I say truthful,  
7 I'm going to ask you this several times, I'm not  
8 implying that you would deliberately lie, but what I'm  
9 saying is that it --

10 MR. DOUGLAS: Well, then, I would object to  
11 truthful. I think what you're saying -- you're  
12 confusing truthtelling with accuracy.

13 MR. MURRAY: Okay.

14 Q. BY MR. MURRAY: Was your original response  
15 accurate when you gave it?

16 A. The amended response is more accurate, and  
17 that's what I meant to say.

18 Q. Okay. Well, as of your deposition on October

19 8, 2002, had your opinions on public awareness  
20 regarding the health risks of smoking, were those  
21 opinions final opinions?  
22 A. I think that the way I have it here that  
23 they're subject to supplementation.

0058

1 Q. Okay. Subject to supplementation. And what  
2 do you mean by supplementation?

3 A. If additional information came across my  
4 desk, or -- including the information that you've got  
5 here, I would -- I can't pretend that it's not going to  
6 have any influence on my conclusions.

7 Q. I guess what I don't understand, then, is  
8 what is the difference between the phrase, subject to  
9 some change, and subject to some supplementation in  
10 your mind?

11 A. I am not going to change my conclusions based  
12 on additional information because I think I had a  
13 good -- that I had most of the information that was  
14 available, but some additional information could cause  
15 me to firm up my conclusions.

16 Q. But no additional information could cause you  
17 to change your opinions; is that your testimony?

18 A. It would be doubtful, yes.

19 Q. And you view your amended response as just a



20 clarification of your original response?  
21 A. Yes.  
22 Q. Was the amended response suggested to you?  
23 A. I don't recall.  
0059  
1 Q. Have you done any supplementation with  
2 respect to your opinions in this case other than, you  
3 know, the specific documents you went over at the  
4 beginning of this deposition?  
5 A. Yeah, the materials that you have -- just the  
6 materials that you have.  
7 Q. And other than looking at those materials  
8 and, as you say, sort of solidifying your opinion, or  
9 being consistent with your opinion, is there any  
10 supplementation that you've made to your opinion?  
11 A. It's firmer now.  
12 Q. Okay. How firm was your opinion when you  
13 originally gave it?  
14 A. It was firm. Now it's more firm.  
15 Q. I don't understand what it means. I guess  
16 that's why I'm asking the question. I'm confused when  
17 you say your opinion is more firm now. I don't  
18 understand what that means.  
19 MR. DOUGLAS: That means it's firmer.  
20 MR. MURRAY: Play a semantic game.

21 A. I don't know how better to explain it.  
22 MR. DOUGLAS: If you can't, you can't.  
23 A. My conclusions were firm now, they're more  
0060  
1 firm. I've got additional information that says --  
2 that makes me be more sure that my original opinion is  
3 correct.  
4 Q. BY MR. MURRAY: Okay. Do you plan on doing  
5 any additional work?  
6 A. I don't plan on doing additional work, but if  
7 some additional information should come up, if I read  
8 it in a public opinion journal that I get or I see it  
9 in the newspaper, I will certainly see it. I can't --  
10 I can't turn my brain off.  
11 Q. Do you plan on affirmatively looking for  
12 additional information?  
13 A. No. No.  
14 Q. And what caused you to decide that you are  
15 not going to look for any additional information?  
16 A. I believe that I've done a pretty exhaustive  
17 search of the public record information on public  
18 opinion about this topic, and I think I'm not likely to  
19 find much more. I don't think it would be fruitful.  
20 Q. Okay. And did you discuss this conclusion  
21 with Mr. Douglas, the conclusion that you're not going

22 to affirmatively seek any additional information?  
23 A. I think I've told him that I don't see any  
0061  
1 reason to seek additional information.  
2 Q. Did he ever suggest to you that you should  
3 stop seeking any additional information?  
4 A. No. Not in that sense, no.  
5 Q. When you say not in that sense, --  
6 A. No.  
7 Q. Okay. All right. Now, on to your next  
8 change, which is on Page 29. I'm sorry. Yeah, it's  
9 29. The question starts on Page 28, though.  
10 Why did you change your response to the  
11 question, I understand that's not likely to be all of  
12 your opinions and conclusions from what you just said,  
13 isn't that right, from, they may change somewhat as I'm  
14 exposed to additional information. I would think they  
15 would not change too much because I've -- from -- I've  
16 gotten quite a bit of information, to --  
17 MR. DOUGLAS: Mike, would it be easier for  
18 her, and for us, I'm sensing, if you just use the why  
19 did? Because we have the exhibit. If you could, it  
20 would just go faster.  
21 MR. MURRAY: Okay. For some of these, I will  
22 try to do that. For others, the contrast between your

23 original response and your amendment is kind of  
0062  
1 dramatic, so I'd want to read those. But for this one,  
2 fine.  
3 Q. BY MR. MURRAY: The second change to your  
4 errata sheet where you're changing the language, change  
5 somewhat as I'm, to supplemented somewhat if I am, why  
6 did you make that change?  
7 A. It's more accurate. More accurately reflects  
8 my response.  
9 Q. And is it for the same reason -- is it, in  
10 your mind, an identical change as the one you made to  
11 Page 26?  
12 A. I would say it's a -- it's -- it's similar in  
13 the sense that supplementation means that I get  
14 additional information. It's going to supplement.  
15 It's going to firm up, it's going to solidify, my  
16 opinion.  
17 Q. But it won't detract from your opinion in  
18 your -- as far as you understand?  
19 A. I would -- I think I made the point here  
20 that -- in that very same question. I would think it  
21 would -- they would not change too much because I've  
22 gotten quite a bit of information.  
23 Q. Okay. So your original response was

0063

1 accurate; is that correct?

2 A. The amended response I think is more  
3 accurate.

4 Q. Well, the original response gave you a little  
5 more wiggle room, I think. It suggested that you could  
6 change your opinion. Now you're saying you could just  
7 make it more firm.

8 Are you saying that now you can't envision  
9 changing your opinion based on additional information?

10 A. Could you ask that without being a  
11 double-negative?

12 Q. Okay. I think you know what I'm asking, but  
13 it's my job to ask a clear question, so I will do that.

14 A. Yes.

15 Q. You originally said that your answer could  
16 change depending on additional information. Are you  
17 now saying that your opinions cannot change no matter  
18 what additional information you may find?

19 A. I'm saying that I do not think they will  
20 change, right. I'm saying I do not think they will  
21 change.

22 Q. And I guess, though, my question is why isn't  
23 your original response just as accurate as your

0064

1 supplemental?  
2 A. I think -- I think the second response is  
3 more accurate.  
4 Q. All right. Was that response you made to  
5 Page 29 suggested to you by Mr. Douglas?  
6 A. I don't recall.  
7 Q. All right. Now, on to --  
8 And you testified earlier that you don't plan  
9 right now on doing any affirmative work that would  
10 cause you to supplement your opinion?  
11 A. That's correct.  
12 Q. Okay. Now, on to the next change, which is  
13 on Page 31.  
14 Why did you make -- you changed the term,  
15 will be used in making some final conclusions to, could  
16 supplement my conclusions. Why did you make that  
17 change?  
18 A. I think it's more accurate.  
19 Q. Did you have final conclusions on October 8,  
20 2002?  
21 A. As of that day, yes. But you're speaking in  
22 the future. I believe the question was referring to  
23 things in the future.  
0065  
1 Q. Well, the question --

2 A. Let me --  
3 Q. Let me just read the question so we don't get  
4 confused. It appears on Page 30.  
5 And it is, have you not had the time between  
6 when you were retained in August 1, 2002, to complete  
7 all that you felt you needed to review to formulate  
8 your final opinions and conclusions. And your response  
9 -- your response was long, but the last part of it, the  
10 part you changed, was, so I know there is information  
11 out there that will be used in making some final  
12 conclusions or could be making -- used in making some  
13 final conclusions which I've just not seen yet.  
14 A. Yes. And I think my amended response, could  
15 supplement my conclusions, is more accurate.  
16 Q. So even though you didn't characterize your  
17 opinions on October 8, 2002, as final conclusions, they  
18 were final conclusions; is that correct?  
19 A. No, they were not final conclusions. I have  
20 additional information that could supplement my  
21 conclusions, and I think we'll talk about that in one  
22 of the exhibits today.  
23 Q. Okay. But why don't you just tell me before  
0066  
1 we get to that what additional information have you  
2 found that caused you to -- did it cause you to

3 finalize your conclusions?  
4 A. It supplemented my conclusions.  
5 Q. Okay. Now, you just told me, though, that  
6 your opinions were not final on October 8.  
7 A. And I apologize, because I hadn't gone back  
8 and reread the question, so the context in which you  
9 were asking the question wasn't clear to me.  
10 Q. Let me just say -- that's fair. From now on  
11 I'll read both the question and the answer. I know it  
12 takes more time, but I don't want to make it confusing.  
13 A. Yes.  
14 Q. So -- okay. Let's --  
15 A. I think -- I think that this is more  
16 accurate. The information that I have, I'm going to  
17 show you in one of the exhibits here today,  
18 supplemented my conclusions. And I think that is  
19 saying that if I find additional information, I'll  
20 supplement my conclusions.  
21 Q. Well, on October 8, 2002, were the opinions  
22 that you gave final conclusions or not?  
23 MR. DOUGLAS: Objection to the form of the  
0067 question.  
1 A. It's -- it's -- how can I say now when I've  
2 got supplemental information which has supplemented my  
3



4 conclusions, which is -- they've been modified or  
5 solidified, obviously, then, those conclusions were not  
6 final --  
7 Q. BY MR. MURRAY: Okay.  
8 A. -- at that time.  
9 Q. And now are the conclusions final?  
10 A. I don't anticipate that they will change  
11 between now and trial.  
12 Q. And what conclusions have you solidified  
13 since October 8, 2002?  
14 A. My conclusions -- in this --  
15 Q. Take your time and read it.  
16 A. I -- I don't want to go back too far, but  
17 this is going on -- I have to say --  
18 Can you give me -- ask -- ask me a question  
19 about what -- and I made a number of -- we were talking  
20 about a number of things in the deposition at that  
21 time. Can you be more precise about what you're  
22 asking?  
23 Q. Unfortunately, I'm trying to get inside your  
0068  
1 head. That's why I'm asking questions.  
2 MR. DOUGLAS: Well, are you asking  
3 conclusions or opinions, because that may be part of  
4 the confusion, here.

5 Q. BY MR. MURRAY: Okay. Let me use your words.  
6 Your words were, so I know there is information out  
7 there that will be used in making some final  
8 conclusions. Now let's stop there.

9 At that point there were some conclusions  
10 that were not yet final that you had; is -- is that  
11 correct?

12 A. I think what I was saying was that if there  
13 was additional information that I hadn't seen it could  
14 supplement my conclusions to make them more solid.

15 Q. Okay. Now, for which conclusions did you  
16 find supplemental information that made them more  
17 solid?

18 A. I found information about -- can I refer to  
19 the exhibit, please?

20 Q. You can refer to whatever you want.

21 A. Which exhibit do you have it labeled as?

22 In Exhibit 9, this chart was supplemented  
23 with information from the Adult Use of Tobacco Survey.

0069

1 It filled in some gaps. This is the first page of  
2 Exhibit 9. This --

3 Oh, I'm sorry. Do I have the wrong exhibit?

4 My -- the first page I have --

5 MR. DOUGLAS: There are two faxed sets.

6 Maybe you have --  
7 A. This is Exhibit 10. Is that the one that  
8 you've got?  
9 Q. BY MR. MURRAY: Yeah. I guess I missed a  
10 number. Okay. Sorry about that.  
11 (Discussion off the record.)  
12 Q. BY MR. MURRAY: Okay. Exhibit 10 -- so  
13 there's a chart that has both Gallup Poll results and  
14 AUTS results?  
15 A. Yes. Adult Use of Tobacco Survey.  
16 Q. So AUTS is an acronym for the Adult Use of  
17 Tobacco Survey.  
18 And, you know, I was going to save my  
19 questions to all these charts until the end, but why  
20 don't I try to speed it up by asking you them right  
21 now.  
22 MR. DOUGLAS: Rather than -- Andy, I think  
23 what he's saying, rather than go through each chart,  
0070 he's going to ask you if -- which --  
2 You want to know which exhibits, and then  
3 you'll go to those?  
4 MR. MURRAY: Yeah, what I'm saying is I'm  
5 going to now ask him some questions that I was going to  
6 save till later just to try to speed this up.

7 Q. BY MR. MURRAY: What is the AUTS?  
8 A. Adult Use of Tobacco Survey.  
9 Q. Okay. And did you have those on October 8,  
10 2002?  
11 A. I did not have them for my testimony.  
12 Q. When did you get them?  
13 A. I -- I actually had parts of them but was not  
14 aware of them. They were in a Surgeon General's Report  
15 that I had not gotten into complete detail on. The  
16 1989 Surgeon General's Report.  
17 Q. Okay. Well, when did you first become aware  
18 of them?  
19 A. Subsequent to the deposition. Early this  
20 year. Early 2003.  
21 Q. So you became aware of it subsequent to your  
22 deposition but before -- but -- also subsequent to your  
23 errata sheet; is that right?  
0071  
1 A. Yes. Yes. Subsequent to the errata sheet.  
2 Q. So this material caused you to sort of  
3 supplement --  
4 A. Yes.  
5 Q. -- your opinion, even though you received it  
6 after your errata sheet; is that correct?  
7 A. Yes.

8 Q. Okay. Now, when -- how did you come across  
9 the AUTS Survey?  
10 A. I went back in rereading this. I talked  
11 about the hours I spent trying to -- to do some  
12 supplemental research. This was in some of the  
13 materials that I went back and looked at. These were  
14 surveys that were reported in the 1989 Surgeon  
15 General's Report. I put the information on the chart  
16 that was in Exhibit 4 in my prior deposition, and it  
17 filled in some of the gaps that were in the line --  
18 some of the gaps from a prior chart that I had.  
19 Q. Okay. Did anyone give you a hint to look for  
20 this AUTS information?  
21 A. I don't recall. I had -- this -- the  
22 materials were there. I went back through materials.  
23 Q. I understand that.  
0072  
1 Did Mr. Douglas steer you in the right  
2 direction?  
3 A. I don't recall if -- you know, we've had  
4 conversations about different things. I don't recall  
5 specifically about going into it.  
6 Q. Do you recall why you would have gone back  
7 and reread the report if he hadn't dropped you a hint?  
8 A. Well, you're implying that he dropped a hint.

9 Q. Well, I guess I am. I'm trying to find  
10 out -- you obviously -- you're saying you had this  
11 information at your last deposition but weren't aware  
12 of it?  
13 A. I had the information. It was in my office  
14 in a stack -- a pile of stuff. There is -- when I go  
15 back and look at it, Trends and Public Beliefs,  
16 Attitudes and Opinions About Smoking, the title of this  
17 chapter, I just went back, --  
18 Q. Okay.  
19 A. -- looked at it, saw the chapter.  
20 Q. Okay. It may have been the case that Mr.  
21 Douglas told you --  
22 MR. DOUGLAS: I'll object to that.  
23 Q. BY MR. MURRAY: -- that this was information  
0073  
1 that was out there, or it may have been the case that  
2 you did it on your own?  
3 A. I don't recall.  
4 Q. You don't remember.  
5 A. I did searches. When you're doing Internet  
6 searches, things pop up in a lot of different places.  
7 Q. Were there any hints that Mr. Douglas did  
8 give you about any particular surveys that may be out  
9 there?

10 A. Gosh, I don't recall. It's been months ago.  
11 Well, I guess yes, because he did send over  
12 this information that told me -- made me aware of  
13 information.  
14 Q. All right. You've already told me about  
15 that. That's fair.  
16 A. Exhibit 10.  
17 Q. I'm just trying to find out how you got this  
18 stuff. And I just want to know, did he give you a hint  
19 that it was out there? That's all I want to know.  
20 MR. DOUGLAS: Well, it's been asked and  
21 answered, so --  
22 A. I don't recall. I did Google searches. I  
23 did searches of databases. I did all sorts of stuff.  
0074  
1 Q. And you also talked to Mr. Douglas?  
2 A. Yeah.  
3 So I don't recall when any of this stuff --  
4 Q. That's fine.  
5 A. -- was --  
6 Q. Okay. Now, what is the methodology that was  
7 employed by the AUTS Survey? Well, strike that.  
8 Is it in the Surgeon General's Report?  
9 A. Yes, it is.  
10 Q. Okay. And is information about the

11 demographics of the respondents in the Surgeon  
12 General's Report?  
13 A. Yes.  
14 Q. And is information about the sample size in  
15 the Surgeon General's Report?  
16 A. Just want to check to be sure.  
17 Yes.  
18 Q. Okay. Now, did you get the complete set of  
19 survey data relating to the AUTS Survey that you've  
20 cited here, --  
21 A. No.  
22 Q. -- from '64, '66, '70, and '75?  
23 Is that data available?  
0075  
1 A. I -- I don't know. I don't know if the data  
2 sets are available.  
3 Q. Would it be of any use for you to look at the  
4 data sets?  
5 A. Not to reach the conclusions that I have  
6 based on the data that are reported in the Surgeon  
7 General's Report.  
8 Q. So you -- so it's -- so you're perfectly  
9 comfortable just reading the report and not looking at  
10 all at the underlying data; is that fair to say?  
11 A. Yes.



12 Q. Are you aware of what other questions were  
13 asked on the -- in the AT -- AUTS Survey that you've  
14 cited on this chart, --  
15 A. I'm aware --  
16 Q. -- '64, '66, '70, and '75?  
17 A. -- I'm aware of some of the questions that  
18 were reported in the Surgeon General's Report.  
19 Q. Okay. Have you looked at a set of questions  
20 that were asked through the AUTS Survey?  
21 A. The ones that were reported in the Surgeon  
22 General's --  
23 Q. Have you looked --  
0076  
1 A. -- Report that --  
2 Q. -- have you looked --  
3 (Interruption by the reporter.)  
4 (Discussion off the record.)  
5 A. Let me see if I can cut to the chase, here.  
6 The information about AUTS, the questions in  
7 the AUTS that I'm aware of, the ones that are reported  
8 in the Surgeon General's Report in 1989, Chapter 4.  
9 Q. BY MR. MURRAY: Okay. Are you -- is it fair  
10 to say you have no interest in looking at what other  
11 questions were asked in the AUTS --  
12 A. No, that's --

13 Q. -- Survey?  
14 A. -- that's not fair to say, I don't think. I  
15 would -- I'm a survey researcher. I collect  
16 questionnaires, et cetera. So it would be of interest  
17 to me professionally.  
18 Q. Okay. Are those questions available to you?  
19 A. I'm not aware if they are.  
20 Q. Have you sought them?  
21 A. No. Not -- not the specific questions. I  
22 have the wording of the questions that were germane to  
23 what I was supplementing here.  
0077  
1 Q. Well, if the other questions -- well, are the  
2 other questions on the survey important to you or not?  
3 A. I don't know. I don't know what other  
4 questions are on the survey. How can I know if it's  
5 important if I don't know the question.  
6 Q. Okay. If that's the case, then why didn't  
7 you seek the other questions on the survey?  
8 A. I believe that the information that I got in  
9 here supplemented my -- the information that I had used  
10 in the prior deposition, and I think that it  
11 supplemented my conclusions.  
12 Q. I understand that, but if there may be other  
13 questions that might be relevant to your opinions, why

14 is it that you didn't seek it?  
15 A. Perhaps it's not fair to say I didn't seek  
16 it. With the searches that I did of the Internet and  
17 the databases on the Internet, these questions were  
18 likely to have come up. I tried to confine my searches  
19 to Internet searches for finding this information.  
20 Most public opinion poll -- most public record public  
21 opinion poll data are on the Internet in some database  
22 form. My conclusion was if I couldn't find it in the  
23 databases there, then this information is -- gives me  
0078  
1 the information I need for putting it -- for the  
2 purposes of this trial.  
3 Q. Okay. Now, if an expert in polling wanted to  
4 obtain a full set of questions to the AUTS Survey,  
5 would they rely only on an Internet search, or is there  
6 anything else that they could do?  
7 A. I suppose I could contact the organization  
8 that published it or contact the Department of Health  
9 and Human Services and get a copy of that.  
10 Q. But you just didn't do that?  
11 A. No.  
12 Q. Is there any reason why you chose not to do  
13 that?  
14 A. Time. And I didn't think it was really

15 necessary for what I needed for here.  
16 Q. Okay. Are there any other -- is there any  
17 other information that you received or became aware of  
18 since your October 8 deposition that caused you to make  
19 some of your opinions more firm?  
20 A. There are similar additional information that  
21 was recorded in the Surgeon General's Report on the  
22 second chart.  
23 Q. So we're looking at Page 3 --  
0079  
1 A. Yes.  
2 Q. -- of Exhibit 10; is that right?  
3 A. Yes.  
4 MR. LEE: Exhibit 9.  
5 Q. BY MR. MURRAY: I'm sorry about that.  
6 Exhibit 9. I'm sorry about that. Damn it.  
7 Okay.  
8 A. And, again, it's data from the Adult Use of  
9 Tobacco Survey.  
10 Q. Okay.  
11 A. And the National Health Interview Survey.  
12 Q. I have a few questions.  
13 First of all, in the Gallup Poll, toward the  
14 end, the -- the last few numbers, I assume one was  
15 supposed to be 1996, and the other is supposed to be

16 1997; is that right? Or no? Or is it '69 --  
17 A. It's 1969, 1971.  
18 Q. Okay.  
19 A. Yeah.  
20 Q. Oh, okay.  
21 MR. DOUGLAS: He was making the 19s firmer.  
22 Q. BY MR. MURRAY: By the way, the charts that  
23 are reflected in this exhibit, did you create those on  
0080  
1 your own or --  
2 A. Yes.  
3 Q. Okay. Have you seen similar charts in  
4 publications?  
5 A. Oh, yes.  
6 Q. Okay. And when I say similar, I mean  
7 basically identical charts using the same information?  
8 A. No.  
9 Q. Okay. Now, for the AUTS results on Page 3,  
10 you cite the '64 and '66 survey, which you also cited  
11 on Page 2, but you cited -- also cited to an '86 survey  
12 that wasn't on Page 2, and you cite on Page 2 to a '70  
13 and '75 survey that aren't on Page 3. And I'm just  
14 wondering why -- what's the reason for --  
15 A. Data are not included in the Surgeon  
16 General's Report.

17 Q. Okay.  
18 A. And my -- let's leave it there.  
19 Q. Okay. Now, is it the case for these AUTS  
20 studies that are on Page 3 that you haven't seen any of  
21 the underlying data?  
22 A. No.  
23 Q. That is the case, correct?  
0081  
1 A. That is the case.  
2 Q. And you haven't seen any questions other than  
3 the questions that are reflected on the charts that are  
4 in this exhibit; is that correct?  
5 A. There are some questions that are in the  
6 Surgeon General's Report that are not reflected in the  
7 charts that I didn't think were necessarily appropriate  
8 to this.  
9 Q. Got you.  
10 But if the questions weren't in the Surgeon  
11 General's Report, then you didn't see them, correct?  
12 A. No.  
13 Q. That's right?  
14 A. That is correct.  
15 Q. Now, NHIS, what did you say that that was?  
16 A. National Health Interview Survey.  
17 Q. And have you seen the data on that survey?

18 A. I have not seen the data on that survey.  
19 Q. Have you asked for it?  
20 A. No.  
21 Q. Do you know if it's available?  
22 A. I don't know if it's available.  
23 Q. How did you come across this data, the NHIS  
0082  
1 19 --  
2 A. It's --  
3 Q. -- 89 --  
4 A. -- it's in the 1989 Surgeon General's Report.  
5 Q. Is the demographics for this NHIS 1985 Study  
6 in the Surgeon General's Report?  
7 A. Yes. For what I need for here to make it  
8 comparable to the data that are in the chart, yes.  
9 Q. And the survey size?  
10 A. It reports a range of survey sizes, because  
11 these are conducted regularly.  
12 Q. Do you know how big the survey size was for  
13 the NHIS 1985 Study that you're relying on on Page 3  
14 here?  
15 A. It was between ten thousand and fifty  
16 thousand persons.  
17 Q. So that's a fairly large study?  
18 A. Yes.

19 Q. Okay. And is the methodology that was used  
20 reflected in the Surgeon General's Report?  
21 A. Yes.  
22 Q. Okay. And are the demographics, methodology,  
23 sample sizes the same between the Gallup Poll, the  
0083  
1 AUTS, and the NHIS?  
2 A. The sample sizes are not the same. And in  
3 some cases the methodology is not the same.  
4 Q. Is it standard for pollsters to compare, in  
5 the way that you have done here, studies that use  
6 different sample sizes and methodology?  
7 A. Yes. And in the Surgeon General's Report,  
8 they did the same thing.  
9 Q. Okay. Have you come up with any information  
10 that's not conveyed through the Surgeon General's  
11 Report?  
12 A. Yes. And I think --  
13 MR. DOUGLAS: You mean on Page 3?  
14 Q. BY MR. MURRAY: I meant on Page 3.  
15 A. I don't think so, no.  
16 Q. And on Page 2?  
17 A. No, I don't think so, no.  
18 Q. So for these, for Page 2 and Page 3, you read  
19 the Surgeon General's Report and just put down the



20 information on your own graph that you got from the  
21 Surgeon General's Report?  
22 A. Yes. Chapter 4, particularly.  
23 Q. Do you know if there are any critiques of the  
0084  
1 AUTS Study or the NHIS Study?  
2 A. Could you define what you mean by critique?  
3 Q. Pollsters who are -- criticized the studies?  
4 A. I'm not aware of any, no.  
5 Q. Did you look for any?  
6 A. No, I did not. They are -- I should say  
7 that they are -- they are considered to be very well  
8 done, very highly-regarded surveys.  
9 Q. The Surgeon General's -- I mean the AUTS  
10 and --  
11 A. Yes.  
12 Q. -- NH --  
13 A. Yes.  
14 Q. And on what basis are you saying that?  
15 A. Common knowledge of survey research and the  
16 use in the public health field.  
17 MR. MURRAY: Off the record.  
18 (Discussion off the record.)  
19 Q. BY MR. MURRAY: Now, on to -- while we're on  
20 this, we might as well keep going through it.

21 Page 4.  
22 A. Um-hum. And I should say Page 4 and Page 5  
23 are the same data. Page 5 just has the numbers removed  
0085  
1 to make it clearer. Because you can see the numbers on  
2 Page 4 get rather garbled in one point.  
3 Q. And did you basically do here the same thing  
4 that you did for -- on Pages 2 and 3, which is the --  
5 read the Surgeon General's Report and just plug in the  
6 information?  
7 A. Yes.  
8 Q. And on the Gallup Polls, it's the same typo,  
9 it's supposed to be -- the last two are supposed to be  
10 '69 and '71; is that right?  
11 A. Yes.  
12 And the 1971 Gallup Poll is a supplemental  
13 piece of information that was not in my exhibit from my  
14 October deposition as well. That was in the Surgeon  
15 General's Report, though.  
16 Q. Okay. Had you read the Surgeon General's  
17 Report before your October 8 deposition?  
18 A. I had read -- the 1989 Surgeon General's  
19 Report?  
20 Q. The one where you get all the information --  
21 A. No.

22 Q. Okay.  
23 A. No.  
0086  
1 Q. You hadn't read it at all?  
2 A. I had -- I've read maybe little bits of it,  
3 but not read it through, no.  
4 Q. Okay. Now, how did you end up with that  
5 report?  
6 A. How did I end up with it?  
7 Q. Yes.  
8 A. Assuming from a Google search, or a search of  
9 database that referred to questions, and then I went  
10 back and got the reports.  
11 Q. So your testimony is that Mr. Douglas didn't  
12 give you the Surgeon General's Report or tell you --  
13 A. I -- I --  
14 Q. -- to --  
15 A. -- I pulled the Surgeon General's Report down  
16 off of a Web site, and I believe it was the Center for  
17 Disease Control Web site, and printed it off in my  
18 office.  
19 Q. And your testimony is Mr. Douglas didn't  
20 suggest that you get your hands on a copy of that  
21 report?  
22 A. I don't recall. I don't recall where that

23 would have come from.

0087

1 Q. Okay. Now, you got this report?

2 A. Yeah.

3 Q. You had it before the October 8 deposition?

4 A. I believe I did, yes.

5 Q. You obtained it because it came up as  
6 including something relevant on the basis of some  
7 searches you had run?

8 A. I don't know -- I can't say I recall why I  
9 had it before the deposition in 19 -- in October, but  
10 the reason that I put it in now is that it came up in  
11 searches, the --

12 Q. Okay.

13 A. -- reason I included it now.

14 Q. Why didn't you read it before your October 8  
15 deposition?

16 A. I have a very busy schedule in my job. I  
17 can't read everything that is out there.

18 Q. So your testimony is that you simply didn't  
19 have time to read the Surgeon General's Report before  
20 your October 8 deposition?

21 A. I think it's more than that. I don't think  
22 I -- I don't think I knew what information was in the  
23 Surgeon General's Report.

0088

1 Q. I understand. But the only way to know is to  
2 read it, right?

3 A. There is a tremendous amount of information  
4 in the world that I can't read everything on.

5 Q. But this Surgeon General's Report, I think  
6 you said, was part of your file before October 8; is  
7 that right?

8 A. No, I did not say it was part of my file. It  
9 was in my office. I have got stacks and stacks of --

10 Q. Oh, okay.

11 A. I do research for state health organizations,  
12 I do spokeswork for hospitals, I've done work for  
13 other not-for-profit organizations. I had it in my  
14 office. I don't know why or where it was in the  
15 office. I saw it -- after I saw the questions, I went  
16 back, --

17 Q. So you --

18 A. -- looked at it, printed it off again.

19 Q. I'm trying not to interrupt, but on the other  
20 hand, I want to try to speed --

21 So you had the report, but your testimony is  
22 that you made -- it may have been for something  
23 unrelated to this litigation?

0089

1 A. Yes.  
2 Q. What -- and you don't recall what caused --  
3 what triggered you to select the Surgeon General's  
4 Report out of all the many, many, many things you have  
5 in your office to look at after your October 8  
6 deposition?  
7 A. Yes. It came up in searches. Either it came  
8 out -- up in searches or in conversation with Mr.  
9 Douglas. I really don't recall the specific reason.  
10 But it came up in my search for additional supplemental  
11 information.  
12 Q. All right. Now on to Page 6 of the fax.  
13 Which is a Bluegrass Poll, Currier Journal, Louisville  
14 Times, June 1994.  
15 Did this information cause you to supplement  
16 any opinions that you had?  
17 A. Yes. But it -- actually, -- this was  
18 actually referred -- this information from this poll  
19 was part of the errata sheet. This is just a graphic  
20 of data that had already been used in the supplement --  
21 Or not the supplement. Excuse me. -- in my amendments  
22 to my deposition.  
23 Q. Okay. And what does this information mean to  
0090  
1 you?

2           A.    This was -- it's interesting to me in the  
3   sense that people who have some contact with tobacco  
4   companies, -- This survey was conducted in Kentucky.  
5   -- who have familiarity, contact, with tobacco  
6   companies, either they work for it, they farm tobacco,  
7   Kentucky is a major tobacco producer, their awareness  
8   about links between cigarette smoking and diseases was  
9   less than people who did not have those sorts of links.

10           And my -- the way this supplemented my  
11   findings was that the closer people were towards  
12   tobacco, the tobacco industry, tobacco use, the less  
13   likely they were to think that these -- that it was  
14   harmful and that the link between cigarette smoking and  
15   things like cancer was strong.

16           Q.    Okay. Now, what relevance, if any, does that  
17   have regarding your opinions on the awareness that  
18   existed in New Hampshire during the relevant period?

19           A.    It gets back to -- it refers or puts things  
20   in a context.

21           There is no -- there is -- as far as I can  
22   tell, there is no data specifically for New Hampshire  
23   in the period. What I'm doing with this information is

0091  
1   to say, similar to I did with the chart which is Page 2  
2   on Exhibit 9, that smokers and nonsmokers have

3 different views about the harms of smoking.  
4 Smokers are less concerned, or however -- are  
5 less likely to think that smoking is a cause of these  
6 diseases than are nonsmokers. This is more information  
7 that says the same kind of thing. That smokers, and in  
8 this case people who are tied somehow to -- with the  
9 cigarette industry, are less likely to think that there  
10 are -- there is a direct link between smoking and lung  
11 cancer, in this case.  
12 Q. Okay. But what relevance does that have, if  
13 any, to awareness in New Hampshire?  
14 A. It has relevance in that smokers -- smokers,  
15 in general, nationwide in the other surveys, are less  
16 likely to think that there are health consequences of  
17 smoking than are nonsmokers.  
18 Q. That's not my question. I'm asking you about  
19 this poll that relates specifically to people in  
20 tobacco-growing regions. What relevance does that have  
21 to awareness in New Hampshire?  
22 A. Again, -- maybe we're just going past each  
23 other, here.  
0092  
1 Q. Let me try to short-circuit it.  
2 Is New Hampshire a tobacco-growing region?  
3 A. No.



4 Q. So New Hampshire's awareness -- the awareness  
5 in New Hampshire, according to these figures, if  
6 they're accurate, would likely be higher than the  
7 awareness of people in tobacco-growing regions; is that  
8 right?

9 A. It -- I would say it would be likely to be  
10 more closely related to the second half of this chart  
11 where it's respondents without tobacco interest.

12 Q. Okay. And isn't it also fair to say that  
13 national surveys that include respondents from  
14 tobacco-growing regions may underestimate the awareness  
15 of people who live in nontobacco-growing regions?

16 A. I don't think it would make a significant  
17 difference because of -- the population sizes are not  
18 that great.

19 Q. Then what's the purpose of this particular  
20 information in this case and its relevance to your  
21 opinion?

22 A. When I making my opinion, I think we  
23 discussed this before, that people who smoke cigarettes

0093

1 are more likely to discount the health risks of  
2 tobacco. And that's what this chart is showing here.  
3 This is also saying that -- this is another indication  
4 people who smoke cigarettes are closer to tobacco, they

5 have a personal relationship with tobacco companies,  
6 more so than nonsmokers because they're buying the  
7 product, is another indication that people who are  
8 closer to tobacco are more likely to discount the  
9 health implications of tobacco.

10 Q. I hear what you're saying, but I guess I just  
11 still don't understand -- but you're not contending  
12 that New Hampshire is a state where there's tobacco  
13 interests?

14 A. No.

15 Q. And so it's -- is this just sort of an aside  
16 to your opinion, that --

17 A. I -- I believe it supplements and solidifies  
18 my opinion about the differences between people who  
19 have -- smokers versus nonsmokers. And how people who  
20 are smokers have a lower assessment or that they  
21 discount the health risks.

22 Q. Okay. I think I know what you're saying.  
23 Now, what is the connection between a smoker  
0094  
1 who may discount a health risk and someone in a  
2 tobacco-growing region who may discount a health risk?  
3 What's the connection, in your mind?

4 A. In my mind, they both have a closer link to  
5 tobacco than nonsmokers and people who are not -- who

6 don't have a tobacco interest.  
7 Q. The links are entirely different, though,  
8 aren't they? One is a link where someone's using the  
9 product, and another is a link where someone may have  
10 an economic interest, correct?  
11 A. Or they may additionally be using the  
12 product.  
13 Q. They may, but is this study -- does this  
14 study indicate how many --  
15 A. No.  
16 Q. -- what percentage of people in  
17 tobacco-growing regions are smokers versus the  
18 percentage of --  
19 A. This study does not, no.  
20 Q. Now, how did you obtain this study, this  
21 Bluegrass Poll?  
22 A. I obtained this from -- which database was  
23 this? I believe this was from -- you have to forgive  
0095  
1 me if I can't remember the exact -- it's a database  
2 that's produced by ORS Publishing. I think it's called  
3 Polling the Nation. It's an on-line database that we  
4 have access to.  
5 Q. You said --  
6 A. That I have access to through the university.

7 Q. Okay. And when did you first obtain the  
8 information that forms the basis of this graph?  
9 A. I don't have any indication of the specific  
10 date on here. It was between -- it was before I  
11 submitted my --  
12 Q. Supplemental --  
13 A. -- supplement, yeah.  
14 Q. Okay. Do you recall what caused you to look  
15 at this particular database and for this information?  
16 A. After my last deposition, one of the things  
17 that we hadn't completely talked about -- two things we  
18 hadn't completely talked about. One was addiction.  
19 That I indicated there would be some additional work  
20 that I wanted to do on finding information on  
21 addiction. The second was there may be some other  
22 things that I would like to do to search again to find  
23 some other information about people's attitudes towards  
0096 smoking.  
1 Q. At the time of your deposition, did you have  
2 any information, any polling information, regarding  
3 differences between perceptions of health risks in  
4 tobacco-growing regions versus nontobacco-growing  
5 regions?  
6 A. I mentioned some anecdotally, yes. And  
7

8 that's from living in Cincinnati. I remember those  
9 things. But I don't have the actual data.  
10 Q. And you hadn't come across that data in your  
11 work for this case prior to the October 8 deposition;  
12 is that right?

13 A. I talked about it in my deposition, so I had  
14 to -- that in my mind before the deposition.

15 Q. All right. Had you looked for it in  
16 connection with this case?

17 A. No. Just from my experience and -- as a  
18 public opinion researcher.

19 Q. Okay. Do you know what the -- have you seen  
20 the underlying data for this survey?

21 A. I have not seen the data. I don't have the  
22 data sets, no.

23 Q. Are you interested in looking at the data

0097

1 sets?

2 A. Am I interested? For the purposes of this?

3 Yeah, I'm interested in looking at the data sets, but I  
4 don't think for the purposes of the information that I  
5 would display -- that I'm talking about in this case  
6 that I would need it.

7 Q. Is there any scenario under which the data  
8 set could be relevant to your opinions in this case?

9           A.    Without seeing a data set, I don't know.  
10   That I would say not for the conclusions that I'm  
11   making.  
12           Q.    And when you decide not to look at a data set  
13   that might -- you know, might not be a big chance that  
14   it would be relevant but it potentially could be  
15   relevant, in making the decision not to look for it, is  
16   that because of a cost benefit analysis? You don't  
17   want to bill too much? What's your thinking on that?  
18           A.    Kind of an internal cost benefit analysis.  
19   Do I have the time to do it? Do I anticipate the  
20   likelihood of finding some -- especially different  
21   relevatory (ph) pieces of information that wasn't found  
22   in other polls? And my conclusion was that, no, that  
23   it wouldn't be worth it.  
0098  
1           Q.    Okay. Now, are you aware of what the survey  
2   size was for this survey, the information that is  
3   reflected on Page 6?  
4           A.    Yes.  
5           Q.    Okay. And that's on the attachment to your  
6   errata sheet?  
7           A.    Yes.  
8           Q.    Which fax page is it?  
9           A.    It's the second -- it's the third-to-the-last

10 page. Page 8, I believe. Yeah.  
11 Q. All right. Are you aware of what the  
12 methodology was that was used in this study?  
13 A. Yes.  
14 Q. And what was that?  
15 A. Telephone.  
16 Q. Are you aware of what other questions were  
17 asked in this survey?  
18 A. There were some additional questions asked.  
19 In fact, if you look at Page 9 of the supplement there,  
20 there's another question asked on that same Bluegrass  
21 State Poll.  
22 Q. Were there any questions asked on the  
23 Bluegrass State Poll other than the ones that you  
0099  
1 attached to your correction and signature page to  
2 deposition?  
3 A. I'm sure there were, yes. The Bluegrass  
4 State Poll is a omnibus poll, or it's a poll about  
5 public opinion in the State of Kentucky. It has a lot  
6 of different topics that are on it. In this case,  
7 there were a couple questions about tobacco.  
8 Q. Okay. Are the -- are the answers -- strike  
9 that.  
10 Are the questions on this Bluegrass Poll

11 available?  
12 A. Yes. They're in your supplement.  
13 Q. Well, you showed me two questions. Are the  
14 other questions that were asked on the Bluegrass Poll  
15 available?  
16 A. I don't know if all of them are available. I  
17 would assume that they probably are -- the  
18 publicly-available questions are available. The ones  
19 that were reported to the public. Because this  
20 database is built -- this database that I searched and  
21 found these polls are -- people submit the entire poll,  
22 or all of the publicly-available information, and that  
23 is inserted into the database. So --  
0100  
1 Q. Did you make my effort to read all the  
2 publicly-available questions that were asked in this  
3 Bluegrass Poll --  
4 A. No.  
5 Q. -- of June '94?  
6 A. No. The database is searchable by topic  
7 area. I didn't bother to look for questions about  
8 attitudes towards the Governor of Kentucky or something  
9 like --  
10 Q. I can understand that.  
11 Are there any other -- so are you confident



12 that there are no other questions that relate in any  
13 way to tobacco on the Bluegrass Poll other than the  
14 ones that you attached to --  
15 A. To --  
16 Q. -- your supplemental?  
17 A. -- to the best of my knowledge.  
18 MR. DOUGLAS: Before you do the next one, can  
19 I just go to the little boy's room?  
20 (Discussion off the record.)  
21 (Recess taken.)  
22 Q. BY MR. MURRAY: Now, -- all right. Now, on  
23 Page 7 of Exhibit 9, there's a question, are you in any  
0101 way concerned about the possible health effects of  
2 cigarette smoking on your health.  
3 When did you obtain this question?  
4 A. That information was part of the Surgeon  
5 General's Report in 1989.  
6 Q. So all the questions about methodology,  
7 demographics, and when you first learned of it, and  
8 whether you saw questions -- the full set of questions,  
9 and underlying data, and all that, the answer to those  
10 questions would be the same for --  
11 A. Yes.  
12 Q. -- this page of --

13           Let me just ask you, though, there are  
14 different -- on the different charts, there were  
15 different -- you don't always give the same years for  
16 the AUTS, and I assume that's because the AUTS didn't  
17 always ask questions. Do you have an understanding as  
18 to why it's the case they ask some questions in some  
19 years and not others?

20       A.   Different focus of the researchers at that  
21 time. It's a --

22           If I could speak just quickly about that  
23 topic.

0102

1           There is -- these types of surveys have a lot  
2 of researchers who want to include questions on the  
3 surveys, and there's generally a limited amount of  
4 space. There's always a fight for getting your  
5 questions included. Sometimes you win; sometimes you  
6 don't.

7       Q.   All right. Let's go back, as an example, to  
8 Page 5. It says AUTS for '64, '66, and then '86. So  
9 there's a twenty-year gap there.

10          Is it a -- do you know for a fact that the  
11 question reflected on this chart was not asked at all  
12 from '66 to '86, or is it possible that it was asked  
13 and the Surgeon General just didn't report it for

14 whatever reason?  
15 A. I would -- I would think that if it had been  
16 asked, it would be reported. My assumption is that if  
17 it had been asked, it would have been reported in the  
18 Surgeon General's Report.  
19 Q. Well, on what do you base that assumption?  
20 A. I would imagine they would want to make their  
21 data in this report as complete as possible based on  
22 the data they have.  
23 Q. And the reason why they asked the question in  
0103  
1 '64, '66, and then didn't ask it again till '86 is  
2 because of budgeting, or --  
3 A. I don't know.  
4 Q. Okay.  
5 A. I gave you kind of a hypothetical that  
6 happens in other surveys like this, but --  
7 Q. Okay. And would -- okay. For all of these  
8 different charts that have AUTS results and NHIS  
9 results and Gallup Poll results, if a particular year  
10 wasn't reported for a particular question, that's  
11 because, as far as you know, the poll just didn't ask  
12 the question that year, and not because the Surgeon  
13 General, for whatever reason, decided not to include  
14 the results?

15 Do you understand my question?  
16 A. I think that's my understanding.  
17 Q. Okay.  
18 A. I don't -- I have no reason to believe that  
19 they would consciously not include the results. I --  
20 on all of the charts that I have, I included all of the  
21 results that were available to me.  
22 Q. Okay. When was the most recent data of the  
23 AUTS Survey?  
0104  
1 A. In this case, it was reported from -- this  
2 chapter, it was reported in 1986.  
3 Q. Did the AUTS Survey continue after 1986  
4 asking other questions?  
5 A. I don't know.  
6 Q. And how does this particular chart on Page 7  
7 bear on your opinions?  
8 A. One of the things that -- that's talked about  
9 in the Surgeon General's Report is the introduction of  
10 levels of personal awareness of beliefs about smoking.  
11 And that's on Page 175 in that report where they talk  
12 about Level 1 awareness where somebody may be aware  
13 that the Surgeon General, in their example, has  
14 determined that smoking is dangerous to your health.  
15 Level 2 is general acceptance that a person may believe

16 that cigarette smoking is dangerous to health in  
17 general. Level 3 is that it's personal -- they call it  
18 personalized acceptance. That a person's own cigarette  
19 smoking may be dangerous to their health.

20 So what this is, is an indication of showing  
21 that, and it relates to some of the earlier charts,  
22 that smokers do not -- smokers, certainly in the  
23 time -- in 1964 and 1966, and even since then, are not

0105  
1 tremendously concerned about the impact of cigarette  
2 smoking on their personal health.

3 In 1964, the earliest data, only half of  
4 cigarette smokers said they were in any way concerned  
5 about the possible effects of cigarette smoking on  
6 their health.

7 Q. Okay. And what, if anything, does that say  
8 about public awareness of the risks of cigarettes -- of  
9 the health risks of cigarettes?

10 A. It says there is quite a bit of difference --  
11 well, the charts about public awareness of health  
12 risks, you can see that -- This is Page 2 of Exhibit 9.  
13 -- that public awareness in 1962, just a general, do  
14 you think cigarette smoking is harmful, that is a very  
15 vague question. We don't know -- we actually do know  
16 from some data that I had in my deposition from October

17 that people are not aware of the specific health  
18 consequences of smoking. They may be aware in general  
19 that it's harmful.  
20 The next level of awareness, when you get  
21 into the specifics of it, this is Page 3, that people  
22 in general aren't as -- were not aware that there was a  
23 link between cigarette smoking -- or that smoking was  
0106  
1 one of the causes of lung cancer, going back into the  
2 early 1960s.  
3 And then this chart that we're referring to  
4 now on Page 7 shows that there's even lower  
5 awareness -- lower personalized awareness of the risks  
6 of smoking on the part of smokers.  
7 Q. Well, let me ask you. Is that what this  
8 chart's showing? I mean, isn't this -- isn't this  
9 question an indirect way of getting at people's  
10 awareness of the risks of smoking to themselves?  
11 A. I believe it is. The in any way concerned  
12 about the possible effects of cigarette smoking on  
13 their health. So --  
14 Q. Well, could it be --  
15 All right. Well, could it be that people  
16 were aware that cigarettes could cause them health  
17 problems but that they weren't concerned about it

18 because they made the decision to smoke and if it hurt  
19 them, it hurt them, but they're not worried about it,  
20 they're willing to live with the risk?

21 MR. DOUGLAS: Objection to the form of the  
22 question.

23 You can answer it, if you understand it.

0107

1 A. Yeah, I -- I --

2 Q. BY MR. MURRAY: Well, this asks about  
3 people's concern with the effects of cigarettes on  
4 their health.

5 A. Um-hum.

6 Q. Is it possible that the changes we're seeing  
7 here don't show a change in awareness that people could  
8 get hurt but are showing a change in people's concern  
9 with their own health?

10 A. I would -- you could make that assumption. I  
11 think a more plausible explanation is that their  
12 awareness of the actual harm caused by cigarette  
13 smoking was far lower in the early 1960s and has  
14 increased over time.

15 And I base that on looking at some of the  
16 attitudes that are expressed by smokers in the earlier  
17 charts.

18 Again, referring back to Page 3, only 53

19 percent of smokers said they thought that cigarette  
20 smoking is one of the causes of lung cancer. In 1964.  
21 And this chart, 50 percent are concerned in any way  
22 about the effects of cigarette smoking on their health.  
23 So to me, --

0108

1 Q. Well, --

2 A. -- that correlates fairly strong, and the  
3 trend is similar.

4 Q. Well, let me ask this. It doesn't ask if  
5 they're concerned in any way; does it?

6 A. It says, are you in any way concerned.

7 Q. All right. You're right. It does say that.  
8 You're right.

9 But weren't a lot of other things happening,  
10 you know, from the '50s forward? I mean, didn't the  
11 jogging craze come up after the '50s, and the interest  
12 in yoga and aerobics, and a general heavier focus on  
13 people's long-term health, didn't that also occur since  
14 the '50s.

15 A. I don't -- in my understanding, that really  
16 didn't occur until the '70s and '80s, which is long  
17 after the beginning of this trend.

18 Q. But it did occur in the -- okay. So what --  
19 explain to me what the trend is as you see it.



20           A.    The trend I see is that in 1964 and in 1966  
21   there was low levels of concern -- of personal concern  
22   about the harm that cigarette smoking causes to  
23   smokers. That sometime after 1966 that increased. So  
0109  
1   knowledge of smokers and nonsmokers about the specific  
2   harms and risks of smoking continued to increase as  
3   additional information came out.  
4           There are some other information that was in  
5   my deposition from back in October that showed that  
6   there was a fairly significant increase in awareness of  
7   the risks of smoking after the Surgeon General's  
8   Report.  
9           You see a similar sort of jump here between  
10   1966 and 1970. This would have been after the second  
11   Surgeon General's Report came out. And I think -- this  
12   is a reflection of increased public awareness of the  
13   dangers of cigarette smoking after that was reported.  
14           So as additional information --  
15           Q.    Okay. I'm --  
16           A.    -- has come out, awareness of risk has  
17   increased.  
18           Q.    Okay. But is it plausible that respondents  
19   in answering this question could have been fully aware  
20   of the risks to them of smoking and yet answered that

21 they weren't concerned because they had made the  
22 decision to smoke irrespective of the risks, they just  
23 weren't going to worry about it?  
0110

1 A. I don't think the other data that I've talked  
2 about gives any support to that position.

3 Q. Okay. So you don't think it's plausible that  
4 any percentage of respondents answering the question  
5 interpreted it in that way?

6 A. That is a different question. I can't speak  
7 to how any individual respondent would have responded  
8 to a particular question. But based on the cumulative  
9 responses to all of these other questions, that, no, I  
10 would think that that's not a very plausible  
11 explanation.

12 Q. Do you think that this is an artfully-worded  
13 question if the intent is to ascertain people's  
14 awareness of whether they were undertaking a risk in  
15 smoking?

16 A. What do you mean by artfully?

17 Q. Is this how you'd word -- if what you wanted  
18 to know is do people understand that when they smoke  
19 they are undertaking a risk, if that's what you wanted  
20 to find out, is this how you would word the question?

21 A. I don't think it's -- I think it's certainly

22 a plausible -- a reasonable wording.  
23 Q. Okay. And why would this be as reasonable as  
0111  
1 saying, are you aware that smoking may cause you --  
2 may -- may -- may adversely affect your health?  
3 A. Any time you use the phrase, are you aware  
4 that, dot-dot-dot, there is what's called an agreement  
5 bias. That respondents are more likely to agree with  
6 you just because of the nature of the way that question  
7 was phrased. You're implying that they should be aware  
8 of something by using the introductory phrase, are you  
9 aware that. So I think that that would not be an  
10 accurate way of assessing --  
11 Q. So asking people a question --  
12 Okay. I'm sorry. I didn't mean to  
13 interrupt.  
14 A. So asking the question in the way that you  
15 just phrased it I don't think would be a good way to  
16 phrase the question.  
17 Q. Okay. Did they define the word concerned in  
18 this survey at all?  
19 A. Apparently -- no, I think the wording of the  
20 question is fairly self-evident. And what we do as  
21 survey researchers, and this is not necessarily true  
22 everywhere, but most survey researchers would say that

23 you don't want to define terms to respondents, you let

0112

1 respondents interpret terms their own way.

2 Q. So if I read this question as saying, you  
3 know, am I worried that smoking will hurt me, as  
4 opposed to, am I aware that smoking may hurt me, are  
5 you saying that I'm misreading the question or my  
6 understanding is not -- just not a reasonable one?

7 A. I -- well, I think the way this question is  
8 worded it's fairly straightforward. Are you in any way  
9 concerned about the possible effect of cigarette  
10 smoking on your health. I think that's common  
11 language, and I think that it's fair to -- it's  
12 reasonable to expect that most people understood that.

13 And given my knowledge of other surveys  
14 conducted through Health and Human Services and HEW  
15 going back to when this one was started, the amount of  
16 testing that is done on questions to make sure that  
17 people understand what the words mean is fairly  
18 intensive on the national studies, the national health  
19 studies.

20 Q. Okay. And did you look at how people  
21 construed this particular question, whether they  
22 construed it the way I'm suggesting, which is, am I  
23 worried about it, as opposed to, am I aware it may

0113

1 happen?

2 A. No.

3 Q. Okay. All right. Now I'm going to flip back  
4 to my questions, here.

5 MR. DOUGLAS: Are you through with the  
6 charts?

7 MR. MURRAY: No. I mean, I got to ask him  
8 about the addiction ones, but I want to go through -- I  
9 mean, what I did, is I switched to the charts and I  
10 stopped asking about the changes, now I'm going to go  
11 back to asking you about changes to your errata sheet,  
12 which I think it's shorter because --

13 THE WITNESS: No, you've got the --

14 MR. MURRAY: Yeah.

15 MR. DOUGLAS: I think you were up to Line 40.

16 Or Page 40.

17 Q. BY MR. MURRAY: Okay. Okay. Now, Page 40,  
18 the question read, did you not have any of the -- of  
19 those following four sources as of August the 1st,  
20 2002. And your response, you had a fairly lengthy  
21 response, but the section of the response that you're  
22 changing said, I don't know how yet to integrate all  
23 that information in because I need some more

0114

1 methodological background on it. And you made a change  
2 to that. Now that part of it reads, I do not know how  
3 yet to integrate all of that information in because it  
4 would be nice to have more background on it. So you  
5 took the methodological out. And you also made another  
6 change -- or let me ask you.

7 What do you think was inaccurate about your  
8 response, your original response?

9 A. I just think that the way it amended is more  
10 accurate. It more reflects what I think I was  
11 thinking.

12 Q. Did you misconstrue the question the first  
13 time around?

14 A. I -- looking -- reading my response through,  
15 I think that my amendment is more accurate.

16 Q. Okay. Is there a -- do you recall why you  
17 said that you needed more methodological background on  
18 it on October 8?

19 A. I don't recall. But I think it's a -- as  
20 I -- as I amended this, it's more accurate. I mean,  
21 I'm going back and rereading it through --

22 Q. Okay. It's a pretty substantive change,  
23 though, correct? I mean, it goes from saying you need

0115  
1 something to just saying it would be nice.

2           A.    I think that it's more accurate to say it  
3 would be nice to have the background information on it.  
4           Q.    Okay.  And what caused you to be aware that  
5 it was less accurate -- your original response was less  
6 accurate than your --  
7           A.    My reading of it.  Reading my deposition of  
8 it.  
9           Q.    Okay.  And do you recall whether you realized  
10 that on your own, or whether it was suggested to you by  
11 Mr. Douglas?  
12          A.    I don't recall.  
13          Q.    Okay.  Have you done any additional  
14 integration since October 8?  
15          A.    I have gotten some additional  
16 methodological -- or I got some additional background  
17 information on the Scholastic Magazine Poll and some of  
18 the HEW Polls that we talked about I think are  
19 referenced in the -- in the Surgeon General's Report.  
20 The methodological --  
21          Q.    Okay.  
22                I'm sorry.  
23                You had additional information on the  
0116  
1   Scholastic Poll?  
2           A.    Which is -- oh, --

3 Q. Let me ask you this.  
4 Are all of the additional information that  
5 you received on the Scholastic Poll contained in --  
6 A. Yes.  
7 Q. -- the documents you brought with you to your  
8 deposition?  
9 A. Yes.  
10 Q. And I'll mark that as an exhibit at the end.  
11 A. Yes. I think you have already done that.  
12 Q. And where did you obtain that information?  
13 A. I got that information from -- through Mr.  
14 Douglas. He got that -- I don't know exactly where he  
15 got that from.  
16 Q. Do you recall whether he said anything to you  
17 about that information when he gave it to you?  
18 A. I don't think he did. I think it was, here's  
19 that information. It's also included in Mr.  
20 Chesson's -- that's where he would have given -- from  
21 Mr. Chesson's --  
22 Q. Affidavit?  
23 A. -- affidavit.  
0117  
1 Q. Okay.  
2 A. It's included as one of the --  
3 Q. Okay. I'm going to ask you some follow-up



4 questions on the Scholastic Poll just so I get --  
5 You received additional information on the  
6 Scholastic Poll. And what was the second type of  
7 information you said? Was it all the information you  
8 had just testified about?  
9 A. Yes.  
10 Q. Oh.  
11 A. It's the information that's included about  
12 the methodological details about some of the polls that  
13 are in the Surgeon General's Report.  
14 Q. So all of the integration that you have done  
15 since your deposition on October 8 consists of  
16 either -- you know, one, the additional Scholastic Poll  
17 information, or, two, information that's contained in  
18 the 1989 Surgeon General's Report and that you've put  
19 onto the charts that Mr. Douglas faxed to me; is that  
20 right?  
21 A. And I believe there are some other  
22 information on those charts that is not specifically  
23 from those polls but it's reflected in the charts, and  
0118  
1 I guess some of the questions about addiction, which --  
2 Q. Which we haven't gotten to yet.  
3 A. Which we haven't gotten to yet.  
4 Q. Okay. But the information relating to the

5 additional deposition material that you would have  
6 gotten outside of the Scholastic Poll and outside of  
7 the 1989 Surgeon General's Report?  
8 A. Well, and the survey from Gallup on people's  
9 awareness -- of smokers' awareness and nonsmokers'  
10 awareness of the Surgeon General's warning, that one  
11 that we've talked about earlier.  
12 Q. Oh, the 1973 study from Phil Morris, I think  
13 you described?  
14 A. Yes.  
15 Q. Okay. All right. Good.  
16 Now, what is the Scholastic Poll? What, if  
17 anything, does the Scholastic Poll information --  
18 strike that. Bad question.  
19 How -- have you integrated the information on  
20 the Scholastic Poll into your conclusions in any way?  
21 A. I would say yes.  
22 Q. And could you explain to me how you have done  
23 that?  
0119  
1 A. Let me get that.  
2 (Discussion off the record.)  
3 Q. BY MR. MURRAY: So I guess we're all looking  
4 now at the affidavit of Michael Chesson, what was  
5 attached to it, and it's called -- it's Exhibit M-89,

6 and it's called Senior Scholastic. It's a cover page  
7 to that February 17, 1960 publication. Okay.

8 Now, I think you were going to answer the  
9 question about how you've integrated that information  
10 into your opinion.

11 A. It's an -- this survey is a -- as far as I  
12 can tell, the methodological details of it are rather  
13 sketchy in the information that's presented here, but  
14 it's a survey of seniors in high school, about ten  
15 thousand seven hundred juniors and seniors in high  
16 school, from all sections of the United States. That's  
17 all it says about methodology. So I don't know if they  
18 were interviewed by telephone, or if it was a  
19 self-administered survey, or if it was an in-person  
20 survey.

21 But the information that I got, there are  
22 three questions about tobacco smoking in here. Excuse  
23 me. Four questions about tobacco smoking. One is if

0120  
1 students smoke or not. And a -- conclusions from that  
2 is that it's more -- roughly 20 percent -- according to  
3 the survey, roughly 20 percent of juniors and seniors  
4 in high school said they smoked, and more than a  
5 quarter of boys at that time said they smoked.

6 Q. Let me ask you that -- something first.

7 Is that in any way relevant to your opinions  
8 in this case?

9 A. Well, I think it's an -- that is just an  
10 indication that there was a significant percentage of  
11 young people that smoked at the time. And this was  
12 approximately about at the time when Julien Longden  
13 would have been contemplating or starting to smoke.

14 Q. Do you know what the rates of high school  
15 smoking are today?

16 A. High school smoking. I have seen them, but I  
17 couldn't tell you what they are off the top of my head.

18 Q. Let me ask you this. In the past ten years,  
19 have the rates of high school smoking been far off of  
20 the 20 to 25 percent you just mentioned?

21 A. I think they may be a little higher than --  
22 in New Hampshire right now. We have some fairly high  
23 rates of teen smoking. But I think they have declined

0121 somewhat. But I couldn't tell you.

2 Q. But are they still in the basic range that  
3 they were in, at least according to this --

4 A. I believe --

5 Q. -- student Scholastic Poll --

6 A. -- I believe they're in the one-quarter to  
7 one-third range. 25 percent to 33 percent range. I'm

8 not precise on --  
9 Q. So the rates are even higher now, is what  
10 you're saying?  
11 A. Possibly, yes.  
12 Q. Okay. Now, --  
13 A. I don't know. You're asking me something  
14 that's not in my area of expertise. I'm just kind of  
15 going from memory from seeing newspaper reports.  
16 Q. Okay. What I'm trying to understand is the  
17 significance. I think you said -- I may have  
18 misunderstood you. I thought you were saying that the  
19 20 to 25 percent rate was a fairly high rate. I may  
20 have misunderstood you. But I thought you were  
21 saying --  
22 I'm trying to understand how was that  
23 relevant to your opinion, that the -- 20 to 25 percent  
0122  
1 of students smoke in this 1960 Senior Scholastic Poll?  
2 A. I think it's relevant that you're saying that  
3 even by 1960 roughly a quarter or so of high school  
4 students smoked, and that --  
5 Q. Okay. Why is that -- I'm just trying -- why  
6 is that relevant to your opinions?  
7 A. Wait a minute. I think we're going down an  
8 alley here. The --

9                   When we got into this, you were asking me  
10 about the changes in the deposition.  
11           Q.     Yup.  
12           A.     Now you're asking me about specifics of this.  
13                   That's not what the amendment to the  
14 deposition or the change to the deposition was about.  
15           Q.     Okay. What I want to find out is, one of the  
16 changes is you said you went out to integrate --  
17           A.     Yes.  
18           Q.     -- additional information.  
19                   You've now told me you have integrated  
20 additional information. You said that the Senior  
21 Scholastic Poll is among the information you've  
22 integrated. I asked you how you integrated that  
23 information, and the first statistic you gave me is  
0123  
1     that 20 to 25 percent of the people in the poll  
2     indicated that they smoked. And my question is, how is  
3     that relevant to your opinion?  
4           A.     Well, perhaps I shouldn't have even mentioned  
5     about the percentage of people smoking. I think the  
6     interesting stuff in the survey is the second question.  
7           Q.     All right. Now, let me -- I want to clarify,  
8     because you brought up the -- is the 20 to 25 percent  
9     figure in any way relevant to your opinions in this

10 case?  
11 A. My opinions in this case are to say why -- or  
12 what was public attitudes towards smoking at the time.  
13 And I can infer from this, and I'm having to infer some  
14 data from this survey without knowing the complete  
15 methodological details behind it, but if we assume that  
16 this was done okay, then it's saying basically a  
17 quarter of kids -- a quarter of juniors and seniors in  
18 high school were smoking. That tells me that the  
19 environment at the time was there was a fairly large  
20 chunk of young people that were smoking. It's an  
21 important thing to know.

22 Q. Okay. And now when you say fairly large, is  
23 that compared to anything?

0124  
1 A. I think a quarter is fairly large. A quarter  
2 of the population are doing something that we now know  
3 is harmful.

4 Q. But even a larger -- I think you're telling  
5 me -- I think you just told me that even a larger  
6 percentage of the population is doing something that  
7 the public now knows in the 1990s for sure is harmful,  
8 correct?

9 A. I'm not sure, because I don't have those data  
10 in front of me.

11 We kind of talked about hypotheticals. And  
12 my memory --  
13 Q. Well, let's assume it's at least 20 to 25  
14 percent of the high school students smoked after the  
15 day that you say or after the year that you say there  
16 was public awareness of the risks of smoking.  
17 A. Um-hum.  
18 Q. And I think that you said that is 1990; isn't  
19 this right?  
20 A. Yes. Approximately.  
21 Q. So after 1990 when the public is aware of the  
22 risks or smoking, if at least as many high schoolers  
23 are smoking as they smoked back in 1960, does that say  
0125  
1 anything at all, do you integrate that in any way with  
2 your opinion?  
3 A. Does it say anything at all? It says that  
4 probably the advertising has been more effectively  
5 targeted towards younger people to have them smoke  
6 more. But that's --  
7 Q. Okay. Let me ask you about that.  
8 What causes you to say that?  
9 A. Some of the research that has come out that I  
10 have read in the newspaper about cigarette smoking  
11 being targeted towards younger people. Put in younger



12 people's magazines.  
13 Q. Before I ask you a whole series of  
14 questions, --  
15 A. Yeah.  
16 Q. -- because I won't ask you a whole series of  
17 questions unless this is going to be part of your  
18 opinion in this case, --  
19 A. (Witness shakes head negatively.)  
20 Q. -- are you going to testify or do you intend  
21 to testify to the jury in this case about the impact of  
22 advertising on youth or anybody else at any period  
23 that's relevant to this litigation?  
0126  
1 A. I don't plan on testifying, no.  
2 Q. Do you believe --  
3 A. Say no.  
4 Q. -- that you have any expertise sitting here  
5 today to testify about the impact of advertising on  
6 youth or anybody else during any period that's relevant  
7 to this deposition?  
8 MR. DOUGLAS: Objection to the form of the  
9 question.  
10 Q. BY MR. MURRAY: And let me just be clear.  
11 I'm trying to protect myself so I don't get surprised  
12 at trial. I don't want to waste time in this

13 deposition asking you a series of questions if you're  
14 never going to testify about it. And I don't know --  
15 A. I --  
16 Q. -- the answer.  
17 A. -- I don't think -- I'm not planning to  
18 testify about anything to do with advertising.  
19 Q. Okay.  
20 A. My understanding is I'm going to be  
21 testifying about primarily -- the materials that I  
22 presented that you -- that you've got.  
23 Q. And those don't include information about the  
0127  
1 impact of advertising on --  
2 A. No.  
3 Q. -- on youth or anybody else, correct?  
4 A. That is correct.  
5 Q. Okay.  
6 MR. DOUGLAS: Well, with the understanding  
7 that to the extent he knows there was advertising, as  
8 he said, that may be or not reflected in the polling.  
9 MR. MURRAY: Well, I mean, that's going to  
10 force me to ask --  
11 MR. DOUGLAS: That's all.  
12 MR. MURRAY: -- a bunch of questions. I  
13 mean, --

14 MR. DOUGLAS: Well, I don't want to have  
15 him -- he's not offered as a marketing expert. He has  
16 expertise in the area, as he mentioned, about consumer  
17 behavior. But if he can never say anything at trial  
18 that the advertising may have retarded and affected the  
19 polls, that -- that I think he can testify to, as to  
20 polling. That's all.

21 MR. MURRAY: Well, you're putting me in an  
22 awkward position, because I wasn't aware at all that  
23 this was part of your opinion. I don't remember

0128

1 seeing --

2 MR. DOUGLAS: I don't know that it is. I'm  
3 just saying I don't want to be precluded from saying  
4 that he can't mention the word A at all at trial.

5 MR. MURRAY: Okay.

6 MR. DOUGLAS: I don't want this deposition to  
7 say that.

8 A. Can I say one thing?

9 You asked me the question --

10 MR. DOUGLAS: Yeah.

11 A. -- why would this -- you asked the question  
12 why do you think that this was -- why would kids be  
13 smoking at the same or higher rate after we know that  
14 cigarette smoking is dangerous. And you -- I'm -- I'm

15 responding as a person. Well, I've seen evidence --  
16 Q. BY MR. MURRAY: All right.  
17 A. -- and research. That's all I'm saying. I  
18 didn't mean to open up a door there.  
19 Q. Okay. So your response in that regard was as  
20 a layman and not as an expert, --  
21 A. Yes.  
22 Q. -- correct?  
23 A. Yes.  
0129  
1 And I believe I said that.  
2 Q. And you haven't looked into the issue of the  
3 impact of advertising and marketing on cigarettes, --  
4 A. No.  
5 Q. -- correct?  
6 A. No, I have not.  
7 Q. And you've never looked into that issue in  
8 your professional capacity as a pollster and public  
9 opinion --  
10 A. No.  
11 Q. -- expert, correct?  
12 A. That's correct.  
13 Q. Okay. And I think Mr. Douglas suggested that  
14 you are not an expert in advertising and marketing but  
15 have an expertise in advertising and marketing. Are

16 you contending that you have an expertise in  
17 advertising and marketing?  
18 MR. DOUGLAS: I think I said as it affects  
19 consumer behavior.  
20 MR. MURRAY: Okay. That's fair.  
21 Q. BY MR. MURRAY: Are you contending that you  
22 have expertise in advertising and marketing insofar as  
23 it affects consumer behavior?

0130

1 A. Yes. I have done market research studies  
2 with organizations that I've worked for in the past,  
3 primarily healthcare organizations. And I have done  
4 some marketing-type research with businesses, et  
5 cetera. So I do have expertise in the area. I do not  
6 consider myself a market researcher, but the techniques  
7 and tools that we use in survey research and public  
8 opinion research are the -- a lot of them are the same  
9 techniques and tools that are used in the market  
10 research.

11 Q. Okay. But you haven't attempted to apply  
12 those to the specific issue of advertising and  
13 marketing of cigarettes; isn't that right?

14 A. That is correct.

15 Q. Okay. All right. Back to the Senior  
16 Scholastic Poll.

17 I think you've exhausted the impact that the  
18 20 to 25 percent figure on smoking rates has on your  
19 opinions; is that fair to say?  
20 A. Right. In my mind, that question and then  
21 the follow-up questions to smokers, when did you start  
22 smoking on a regular basis, that just puts things in  
23 context, assuming that the data are correct, here, it  
0131  
1 puts things in context about the approximate percentage  
2 of people at that time who are smoking. Younger people  
3 who are smoking.  
4 Q. Right. But that particular piece of  
5 information doesn't necessarily affect your opinion in  
6 any meaningful way; is that correct?  
7 A. I would say that's a fair -- yes.  
8 Q. You haven't done -- made any efforts to  
9 compare the smoking rates that are reported in this  
10 poll with the smoking rates that existed over time; is  
11 that correct?  
12 A. That's correct.  
13 Q. All right. Now, what other information or  
14 what information in this poll did you integrate into  
15 your opinions in this case?  
16 A. In Question 2, what do you think about cancer  
17 and cigarette smoke. This was asked to all students.

18 And they give three or four basic responses. First,  
19 that only heavy smokers who smoke two or more packs a  
20 day run a greater risk of getting lung cancer than a  
21 nonsmoker. Then it's light smokers have a greater risk  
22 in that there is -- I think smoking may have some  
23 connection with lung cancer but there is no conclusive

0132  
1 evidence and finding that smoking --

2 MR. DOUGLAS: Slow down.

3 A. -- finding that smoking has no connection  
4 with lung cancer.

5 And what I take from this, and I'm just going  
6 to focus on the first column, the total column, is that  
7 approximately more than half of the people, of the  
8 students interviewed in this survey, kind of get it  
9 wrong about smoking at that time. Their opinions about  
10 the dangers or the connections between smoking and  
11 cancer were inaccurate.

12 Q. BY MR. MURRAY: And how do you get that?

13 A. I get that from the 19.6 percent who say that  
14 only heavy smokers who smoke two or more packs a day  
15 run a greater risk of getting cancer than a nonsmoker.

16 Q. Okay.

17 A. I think that, as a layman, my understanding  
18 of the Surgeon General's Study and other information on

19 smoking is that any amount of smoking increases your  
20 risk of getting lung --  
21 Q. Okay. But that group, you're saying, got it  
22 wrong?  
23 A. I think the 32.2 percent, they get that wrong  
0133  
1 in terms of today's understanding of science, that I  
2 think smoking may have some connection with lung cancer  
3 but there is no conclusive evidence --  
4 Q. Well, let me ask you on that. Did they get  
5 it wrong based on the information that was available to  
6 them at the time?  
7 A. I would say it depends. The American Cancer  
8 Society had its report out in 1957 that said that, yes,  
9 there was a link between lung cancer and smoking.  
10 So --  
11 Q. Okay.  
12 A. -- I -- I think it's reasonable to say that  
13 in retrospect they got it wrong.  
14 Q. Because of what the ACS said.  
15 Are you aware of what any other groups or  
16 scientists were saying at the time about the link  
17 between smoking and cancer?  
18 A. Well, I -- it's -- it's not an area of which  
19 I have --



20 Q. Okay. That's all I wanted to know.  
21 A. And then the 2 percent that say smoking has  
22 no connection with lung cancer got it wrong. So if you  
23 add those three groups up, you get about 53 -- excuse  
0134 me, 54 percent who really answered incorrectly.  
2 Q. Okay.  
3 A. Because I think the correct answer in this  
4 case is that both light smokers and heavy smokers run a  
5 greater risk of getting lung cancer than nonsmokers.  
6 Q. But doesn't this reflect a high level of  
7 awareness that smoking is risky and can cause lung  
8 cancer?  
9 A. I'd say that students certainly indicate they  
10 understand that there is some linkage between the two.  
11 But the one other thing I should say as a  
12 survey methodologist is that you run into some problems  
13 with the question like this on two counts.  
14 The first count is that it's a very wordy  
15 question, a lot of words. It's difficult for people to  
16 keep all of those words in their --  
17 Q. Okay.  
18 A. -- head.  
19 Q. And the words are the different categories?  
20 A. Just the numbers of words that are there for

21 them to read and keep in their minds.  
22 Q. Okay.  
23 A. And there is something that's called a  
0135  
1 primacy effect that occurs in surveys. That people in  
2 surveys, other than telephone surveys or  
3 self-administered -- excuse me, telephone surveys or  
4 in-person surveys, people are more likely to respond  
5 with the first thing that they read that looks  
6 plausible, that looks reasonable.  
7 Q. Well, --  
8 A. So the first couple things.  
9 So I think it points out that fewer people  
10 are likely to get down to that last response. So  
11 that's the one --  
12 Q. Okay. Before you continue, doesn't that  
13 suggest, then, that the number of people who think that  
14 only a heavy smoker, smokes two or more packs, might be  
15 a little inflated?  
16 A. Could possibly be. But I think it also  
17 indicates that the people at the other end of the scale  
18 that say smoking has no connection with lung cancer is  
19 probably underrepresented.  
20 Q. Okay. Do you know whether those two wash out  
21 or what impact those would have at all?

22 A. You'd have to do some experiments to say.  
23 Q. Okay.  
0136  
1 A. You'd have to -- I'm talking about some of  
2 the potential problems --  
3 Q. Okay.  
4 A. -- with a question like this that a  
5 methodologist would have to look at.  
6 Q. Okay.  
7 A. The other potential problem gets back to  
8 something I referred to earlier called social  
9 desirability bias or agreement bias.  
10 This question gives four possible responses,  
11 and three of them talk about a link between lung cancer  
12 and smoking. The implication is that there is a link  
13 and you now just have to choose among -- which level  
14 the link is at.  
15 So the -- the way that -- it's not what's  
16 called a balanced question, where you would have equal  
17 numbers of categories on both sides of the issue. So  
18 that those are just things that you have to kind of --  
19 Q. They raise red flags?  
20 A. They raise some red flags with the question.  
21 Q. But you don't know whether or not that  
22 actually created a problem?

23 A. That's true.

0137

1 Q. Okay. Anything -- any other problems that  
2 you have with the survey?

3 A. The biggest problem that I have is I have no  
4 way of knowing how students were selected to  
5 participate in the survey. You don't know response  
6 rates. You don't know if it was -- you know, if they  
7 were given the survey in class and said, here, fill  
8 this out, or if they got it at their home where they  
9 could fill it out in private. Those sorts of things.

10 Q. Okay. Well, why would those things matter?

11 A. Filling out surveys in a group is fairly --  
12 can be problematic in that people will look to see and  
13 talk to their neighbor. So, what are you going to  
14 write down? This particularly happens with surveys  
15 that ask about behavior that is either known to be  
16 illegal or frowned upon.

17 There is a survey in New Hampshire called the  
18 Teen Assessment Project, or TAP, which asks people  
19 about their sexual behavior and use of illegal drugs  
20 and drinking. And the estimates of Heroin use and  
21 Cocaine use among eighth graders are fairly wildly  
22 inflated, because I talk with the people who do this.  
23 The kids kind of get together and say, oh, yeah, let's

0138

1 answer that way. Let's say we're using Heroin.

2 Q. For that bias to have any impact on this  
3 question, it would have to be the case that smoking was  
4 something that people generally at least knew was wrong  
5 for them to do, correct?

6 A. I don't think there's any -- there's no word  
7 in here that says it's wrong, so --

8 Q. Well, no, no. But I think you're saying -- I  
9 thought you said one of the problems with this is when  
10 they get in a group people might look over their  
11 shoulders, and where it's the case that the question is  
12 asking about something where the people know that it's  
13 bad for them, --

14 A. Right.

15 Q. -- or know they shouldn't do it, they're more  
16 likely to give high --

17 A. No, I'm not saying that they're more likely  
18 to do that. I'm saying what they're more likely to do  
19 is look at what other people are doing and do what the  
20 group does. So there's kind of a social desirability  
21 bias.

22 If you're in a group of bad kids, with quotes  
23 around bad kids, and -- you want to answer like the

0139

1 people in your clique, in your group. If you're in a  
2 group of good kids, you might be more likely to answer  
3 that you don't do those sorts of things because you  
4 don't want to appear outside of the people in your  
5 clique.  
6 So you don't know how that's going to impact  
7 questions. What you want to do is try to have people  
8 answer questions by themselves, you know, with some  
9 degree of privacy so those issues aren't raised.  
10 Q. So --  
11 A. And I don't know how this survey was  
12 conducted. I don't know if that was an issue or not.  
13 So that's something that I would like to know.  
14 Q. Okay. Any other red flags?  
15 A. I think those are the --  
16 Q. Have you read any critiques about this study?  
17 A. I have not read any critiques about this  
18 study.  
19 Q. Do you know whether there were any critiques  
20 of this study in any of the materials that you had at  
21 your last deposition?  
22 A. I don't recall.  
23 Q. Okay.  
0140  
1 A. I don't recall right now.

2 Q. All right. Now, I'm unclear whether you  
3 have, in your mind, discounted this study, or whether  
4 in -- you, in your mind, have taken this study to  
5 say -- saying something helpful to you. I mean, you  
6 began by telling me that this shows you that a high  
7 percentage of people, in your mind, got it wrong, at  
8 least based on the facts that are known today. And  
9 then you told me that there's all sorts of red flags.

10 So are you saying that this study supports  
11 you, or are you saying that this study has potential  
12 problems so that you really can't use it, or are you  
13 saying both?

14 A. I'm saying that it actually -- in my mind, it  
15 causes -- it raises more questions and problems than  
16 the data -- than the data solved for me.

17 Q. Do you --

18 A. So it's problematic. It's interesting. I  
19 don't think I would discount it and say that we  
20 would -- should ignore it. But it's something where  
21 you have a lot of red flags in the methodology and the  
22 way the questions are asked. So I have to be very  
23 careful about how I do it. How I answer it.

0141

1 So how I would integrate this in, which gets  
2 back to the original line of questioning, here, I'm

3 integrating it into my findings by -- I guess my  
4 response to it is, hmm, that's interesting, that says a  
5 little bit of things, I don't quite know what to do  
6 with it because of the methodological problems with --  
7 Q. Okay.  
8 A. -- the survey. The potential methodological  
9 problems with the survey.  
10 Q. Do you think it would be reasonable for a  
11 pollster to construe this poll result to cut against  
12 your common awareness opinion? And let me say, keeping  
13 in mind that the results were reported in 1960, and  
14 that was several years before the 1964 Surgeon  
15 General's Report.  
16 A. I think they would have to still deal with  
17 the same sort of methodological issues and explain why  
18 those issues would not be a potential problem in their  
19 interpreting the results.  
20 Q. Well, one of the methodological problems I  
21 thought you said was that you didn't know -- well, you  
22 didn't know some of the methodology, I think. And I  
23 think you also said you don't know the methodology of  
0142  
1 several of the polls that you're relying on. Or at  
2 least some of the polls that you're relying on in this  
3 case. Is that right?



4 MR. DOUGLAS: Objection.  
5 Q. BY MR. MURRAY: Did I misconstrue what you  
6 said?  
7 MR. DOUGLAS: Yeah.  
8 A. I don't think I said that. I think back in  
9 the original deposition these are the kinds of polls  
10 that I was saying I wasn't aware of all of the  
11 methodology.  
12 And in this case, even though I have  
13 additional information about the survey, I still don't  
14 know all of the methodology used in -- I don't know if  
15 anyone other than the person who might have conducted  
16 the research knows --  
17 Q. But for all the polls that you're relying on,  
18 is it your testimony that you are aware of the  
19 methodology?  
20 A. I am aware -- of all the polls that I'm  
21 relying on, I've got a understanding of the methodology  
22 used or I know the standard-type of methodology used by  
23 that organization, and I have no reason to believe that  
0143  
1 the polls that I'm looking at are different than other  
2 polls.  
3 For example, Gallup Polls use pretty much the  
4 same methodology in all of their surveys. If I don't

5 know the precise methodology for a Gallup Poll  
6 conducted in 1975, but I know what it was in 1976 and  
7 '74, it's a reasonable conclusion that Gallup didn't  
8 change their methodology. In fact, knowing Gallup,  
9 under- -- the importance of methodology in survey  
10 research, pretty confident that they did not change  
11 their methodology.

12 Q. Okay. If -- is there anything -- did you  
13 disagree with the way that Chesson used this poll in  
14 the section of the affidavit that you read?

15 A. Yes.

16 Excuse me. That's -- get the right page,  
17 here.

18 MR. DOUGLAS: Page 41?

19 MR. MURRAY: Yeah.

20 A. I think that -- I would agree, simply because  
21 I don't believe he's as cautious as he should be given  
22 the methodological concerns that I would have with this  
23 survey.

0144

1 Q. BY MR. MURRAY: When you say cautious, do you  
2 construe what he's doing, the way in which he's using  
3 these polls, as -- strike that.

4 Do you read his affidavit to say that he is  
5 relying on these polls in reaching his conclusions?

6 A. First off, I got a very limited slice of the  
7 affidavit, here. Just a couple pages. Given that he  
8 only talks about polls on essentially a page-and-a-half  
9 or so out of what you said were forty-some pages of the  
10 affidavit, I'm assuming that he relies on much more  
11 than polls --

12 Q. Okay.

13 A. -- to come to the conclusions that he has.

14 Q. But you're saying that he used it in a sloppy  
15 manner, and I guess I'm trying to understand that --

16 A. I -- I didn't say that he's using it in a  
17 sloppy manner.

18 Q. Oh, I'm sorry.

19 A. That he maybe is not as cautious as he should  
20 be with that particular poll.

21 Q. Okay. You're right. You did say that.

22 And I think you testified about a bunch of  
23 red flags that it raised in your mind, but what he's

0145  
1 saying here is that that was among the polls that  
2 confirm his opinion of common knowledge.

3 So do you have any critique about using that  
4 poll as, you know, additional support or confirmation  
5 of an opinion?

6 MR. DOUGLAS: I think he's already answered

7 that.  
8 Q. BY MR. MURRAY: Have you?  
9 MR. DOUGLAS: I mean, --  
10 A. Let me see if I can answer -- I think I can  
11 answer what you mean by looking at the other three  
12 polls that he cites around it.  
13 Q. BY MR. MURRAY: Um-hum.  
14 A. He cites two Gallup Polls and a US Department  
15 of Health, Education, and Welfare Survey.  
16 Q. Um-hum.  
17 A. I understand what Gallup's methodologies are.  
18 I know how they do their polls. They're a reputable  
19 organization. Been in business for a long time. The  
20 US Department of Health, Education, and Welfare Survey  
21 is -- given the way they conduct their surveys is  
22 likely to have very good methodology. The fact that  
23 you have three surveys that are used or done by good  
0146 organizations with reputations of carrying out good  
2 polls and then one where you really don't know what the  
3 methodology is, and you don't know how that -- those  
4 data were collected, that poll kind of sticks out to me  
5 as something that would not carry as much weight as the  
6 other three.  
7 Q. Okay.

8 MR. DOUGLAS: All right. I'm going to have  
9 to run, unfortunately.

10 MR. MURRAY: All right. And Mr. Douglas and  
11 I have agreed that we're going to, and Mr. Smith, Dr.  
12 Smith, has agreed that we're going to continue the  
13 deposition at our mutual convenience, but hopefully  
14 sooner rather than later.

15 MR. DOUGLAS: Unfortunately, we'll have to.

16 (The deposition suspended at 4:10 p.m.)

17 (Smith Exhibits 12 through 15 were  
18 marked for identification off the record.)  
19  
20  
21  
22  
23  
0147

1 CERTIFICATE OF WITNESS

2 I, ANDREW EDWIN SMITH, PH.D., have read the foregoing  
3 transcript of deposition taken on Friday, March 28,  
4 2003, at the offices of Douglas, Monziona, Leonard &  
5 Garvey, PC, Concord, New Hampshire, and do hereby  
6 swear/affirm it is an accurate and complete record of  
7 my testimony given under oath in the matter of Longden  
8 v. Philip Morris, et al., including any and all

9 corrections that may appear on those pages so denoted  
10 as "Corrections."  
11

12  
13 ANDREW EDWIN SMITH, PH.D.

14 STATE OF  
15 COUNTY OF

16  
17 Subscribed and sworn to before me this  
18 day of , 20 .

19  
20 Notary Public  
21 Justice of the Peace  
22 My Commission Expires:  
23

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1 C E R T I F I C A T E

2 I, Jennifer A. Vaillancourt, a Certified  
3 Shorthand Reporter and Notary Public of the State of  
4 New Hampshire, do hereby certify that the foregoing is  
5 a true and accurate transcript of my stenographic notes  
6 of the deposition of ANDREW EDWIN SMITH, PH.D., who was  
7 first duly sworn, taken at the place and on the date  
8 hereinbefore set forth.

9 I further certify that I am neither

10 attorney nor counsel for, nor related to or employed by  
11 any of the parties to the action in which this  
12 deposition was taken, and further that I am not a  
13 relative or employee of any attorney or counsel  
14 employed in this case, nor am I financially interested  
15 in this action.

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